

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Onyx Distributing Company, Inc. d/b/a Florida Comm South for apparent violation of Section 364.183(1), F.S., Access to Company Records.

DOCKET NO. 000230-TX
ORDER NO. PSC-00-0680-SC-TX
ISSUED: April 12, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Onyx Distributing Company, Inc. d/b/a Florida Comm South (Onyx) is an ALEC certificated to operate in Florida pursuant to Certificate Number 4757. As a provider of telecommunications services in Florida, Onyx is subject to the rules and regulations of the Commission.

On June 25, 1999, our staff sent to Onyx a certified letter, requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. On July 6, 1999, Onyx signed for delivery of the letter. Receiving no response, on December 6, 1999, our staff sent a second certified letter, requesting a response from Onyx no later than December 22, 1999. To date, they have not responded to our staff's inquiries.

Section 364.183(1), Florida Statutes, provides that we shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within our jurisdiction. The rule further provides that we may require telecommunications companies to provide the requested records to us in the form specified by us.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, 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, Florida Statutes. 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).

We believe that Onyx's conduct in not providing access to company records, in apparent violation of Section 364.183(1), Florida Statutes, 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 titled In re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, 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 act, such as Onyx's conduct at issue here, would meet the standard for a "willful violation."

Upon consideration, Onyx shall have 21 days from the date of this order to respond in writing why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes. If Onyx timely responds to the show cause order, this docket shall remain open, pending resolution of the show cause proceeding. If Onyx does not respond to this Order to Show Cause, the fine shall be deemed assessed. If Onyx pays the fine, it should be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. If Onyx fails to respond to the Order to Show Cause, and the fine is not received within ten business days after the expiration of the show cause response period, Certificate Number 4757, issued to Onyx Distributing Co., Inc. d/b/a Florida Comm South, shall be canceled and this docket closed.

Based on the foregoing, it is therefore

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ORDERED by the Florida Public Service Commission that Onyx Distributing Company, Inc. d/b/a Florida Comm South shall show cause in writing within 21 days of the date of this Order why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes. It is further

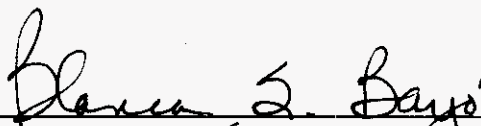
ORDERED that any response to the Order to Show Cause filed by Onyx Distributing Company, Inc. d/b/a Florida Comm South shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, as well as a waiver of the right to a hearing, and will result in the automatic assessment of the fine. It is further

ORDERED that if Onyx Distributing Company, Inc. d/b/a Florida Comm South pays the fine, it shall be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that in the event Onyx Distributing Company, Inc. d/b/a Florida Comm South fails to respond to this Order and the fine is not received within ten business days after the expiration to the show cause response period, Certificate Number 4757 shall be canceled, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th day of April, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 3, 2000.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.