

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against First Touch, Inc. for apparent violation of Rule 25-24.835, F.A.C., Records and Reports; Rules Incorporated, and Section 364.183(1), F.S., Access to Company Records.

DOCKET NO. 000074-TX  
ORDER NO. PSC-00-0747-SC-TX  
ISSUED: April 17, 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:

A. BACKGROUND

On May 26, 1998, First Touch, Inc. (First Touch) was certificated as an Alternative Local Exchange Company (ALEC). On March 30, 1999, First Touch reported no revenues for calendar year 1998. On July 1, 1999, our staff sent a certified letter to First Touch instructing it to provide certain requested data by August 8, 1999, for inclusion in a Legislatively mandated report on local competition. On July 6, 1999, the certified return receipt, attached hereto as Attachment A and incorporated herein by reference, was signed for by First Touch's General Manager.

From July 21 - August 12, 1999, our Division of Consumer Affairs received three complaints against First Touch, and accordingly, requested responses to the complaints. To date, however, First Touch has not responded to the complaints. On December 6, 1999, after receiving no response to their July 1, 1999 letter, our staff sent another certified letter, attached hereto as Attachment B and incorporated herein by reference, to First Touch, instructing it to respond to the data request no later than December 22, 1999. On December 21, 1999, our staff's December 6, 1999, certified letter, attached hereto as Attachment C and

DOCUMENT NUMBER-DATE

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FFSC-RECORDS/REPORTING

incorporated herein by referenced, was returned, marked "Returned to Sender. Not deliverable as addressed - unable to forward."

B. FAILURE TO PROVIDE ACCESS TO COMPANY RECORDS

Section 364.386, Florida Statutes, Reports to the Legislature, states in part:

364.386 Reports to the Legislature.-

(1) The commission shall submit to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and the House of Representatives, on December 1, 1996, and on an annual basis thereafter, a report on the status of competition in the telecommunications industry and a detailed exposition of the following:

(a) The overall impact of local exchange telecommunications competition on the continued availability of universal service.

(b) The ability of competitive providers to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions.

(c) The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.

(d) The overall impact of price regulation on the maintenance of reasonably affordable and reliable high-quality telecommunications services.

(e) What additional services, if any, should be included in the definition of basic local telecommunications services, taking into account advances in technology and market demand.

(f) Any other information and recommendations which may be in the public interest.

Our staff requested certain information from First Touch in order to comply with Section 364.386, Florida Statutes. Based upon the return receipt our staff received from the initial data request of July 1, 1999, Attachment A, it appears that First Touch received the data request and could have responded. It is imperative that we receive 100% participation to accurately reflect the status of local telecommunication competition to the Legislature and the Governor.

ORDER NO. PSC-00-0747-SC-TX  
DOCKET NO. 000074-TX  
PAGE 3

Section 364.183(1), Florida Statutes, Access to Company Records states in part:

364.183, Access to Company Records. -

(1) The commission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the commission's jurisdiction. The commission shall also have access to those records of a local exchange telecommunications company's affiliated companies, including its parent company, that are reasonably necessary for the disposition of any matter concerning an affiliated transaction or a claim of anticompetitive behavior including claims of cross-subsidization and predatory pricing. The commission may require a telecommunications company to file records, reports or other data directly related to matters within the commission's jurisdiction in the form specified by the commission and may require such company to retain such information for a designated period of time.

Since First Touch did not respond to our staff's July 1, 1999, data request, effectively denying us access to its company records, it appears that First Touch is in apparent violation of Section 364.183, Florida Statutes.

Pursuant to 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).

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, we nevertheless found it appropriate to order the company 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 First Touch's conduct at issue here, would meet the standard for a "willful violation." We find that First Touch's conduct in failing to respond to our data request and effectively denying us access to its company records in apparent violation of Section 364.183, Florida Statutes, has been "willful" in the sense intended by Section 364.285, Florida Statutes.

Accordingly, we find it appropriate to order First Touch to show cause in writing within 21 days of the date of this Order why it should not be fined \$10,000 or have Certificate Number 5621 canceled for failure to provide the Commission access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records. If First Touch timely responds to this Order, this docket shall remain open pending resolution of the show cause proceeding. First Touch's response must contain specific allegations of fact and law. If First Touch, fails to respond to the Order to show cause or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts shall be deemed admitted, the right to a hearing shall be deemed waived, and Certificate Number 5621 shall be canceled.

Any fine monies received by the Commission shall be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes.

**B. FAILURE TO UPDATE ADDRESS**

As stated previously, First Touch holds an active Certificate of Public Convenience and Necessity to provide ALEC telecommunications services in Florida. Pursuant to Rule 25-24.480(2)(a) and (b), Florida Administrative Code, Records & Reports; Rules Incorporated, incorporated by reference in Rule 25-24.835, Florida Administrative Code, Rules Incorporated, each company shall have 10 days after a change occurs to file updated information indicating any changes in the certificate holder's address (including street name and address, post office box, city), telephone number, and any change in the name and address of the individual who is serving as primary liaison with the Commission. Mail sent to First Touch on December 6, 1999, was returned to us by the United States Postal Service. Clearly, it has been well over 10 days since a change has occurred to First Touch's mailing

address, phone number, and liaison information, and to date, our staff has not been provided with an update, nor has the company requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code.

Based upon First Touch's failure to update its mailing address, phone number, and liaison information on file with the Commission, or to request cancellation of its certificate, it appears that First Touch is in apparent violation of Rule 25-24.835, Florida Administrative Code, Records and Reports; Rules Incorporated. Based upon our previous analysis, we find that First Touch's conduct at issue here has been "willful" in the sense intended by Section 364.285, Florida Statutes.

Accordingly, we find it appropriate to order First Touch to show cause in writing why it should not be fined \$500 for apparent violation of Rule 25-24.835, Florida Administrative Code, Records and Reports; Rules Incorporated. If First Touch timely responds to this Order, this docket shall remain open pending resolution of the show cause proceeding. First Touch's response must contain specific allegations of fact or law. If First Touch, fails to respond to the Order to show cause or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted and the right to a hearing shall be deemed waived. If the fine is not paid within ten business days after the Order becomes final, it shall be forwarded to the Office of the Comptroller for collection.

Any fine monies received by the Commission shall be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that First Touch, Inc. shall show cause in writing within 21 days of the issuance date of this Order why it should not be fined \$10,000 or have Certificate Number 5621 canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. It is further

ORDERED that First Touch, Inc. shall show cause in writing within 21 days of the issuance date of this Order why it should not be fined \$500 for apparent violation of Rule 25-24.835, Florida

ORDER NO. PSC-00-0747-SC-TX  
DOCKET NO. 000074-TX  
PAGE 6

Administrative Code, Records and Reports; Rules Incorporated. It is further

ORDERED that any response to the Order to Show Cause filed by First Touch, Inc. shall contain specific allegations of fact and law and shall identify the company name and this docket number. It is further

ORDERED that failure to respond to any of the show cause actions in this Order in the manner and date set forth in the "Notice of Further Proceedings and Judicial Review" section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of the respective fine or fines. It is further

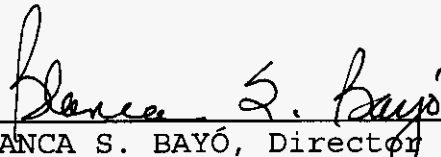
ORDERED that in the event First Touch, Inc. fails to respond to the Order to show cause for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records, or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, Certificate Number 5621 shall be canceled. It is further

ORDERED that in the event First Touch, Inc. fails to respond to the Order to show cause for apparent violation of Rule 25-24.835, Florida Administrative Code, Records and Reports, Rules Incorporated, or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, it shall be forwarded to the Office of the Comptroller for collection. It is further

ORDERED that this Docket shall remain open to address any response to the show cause actions. Upon payment of the fines, forwarding of the fines to the Office of the Comptroller, or cancellation of the certificate, this docket shall be closed.

ORDER NO. PSC-00-0747-SC-TX  
DOCKET NO. 000074-TX  
PAGE 7

By ORDER of the Florida Public Service Commission this 17th  
day of April, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

SOME (OR ALL) ATTACHMENT PAGES ARE NOT ON ELECTRONIC DOCUMENT.

DMC

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 8, 2000.

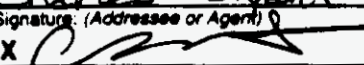
Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

ORDER NO. PSC-00-0747-SC-TX  
DOCKET NO. 000074-TX  
PAGE 8

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.



ATTACHMENT A

Is your RETURN ADDRESS completed on the reverse side?	<b>SENDER:</b> <small>           • Complete items 1 and/or 2 for additional services            • Complete items 3, 4a, and 4b            • Print your name and address on the reverse of this form so that we can return this card to you            • Attach this form to the front of the mailpiece or on the back if space does not permit            • Write "Return Receipt Requested" on the mailpiece below the article number            • The Return Receipt will show to whom the article was delivered and the date delivered         </small>		I also wish to receive the following services (for an extra fee): 1 <input type="checkbox"/> Addressee's Address 2 <input type="checkbox"/> Restricted Delivery Consult postmaster for fee	
	Charles Bryant General Manager (904) 721-4821 or First Touch, Inc. 1038-48 Dunn Avenue Jacksonville, FL 32218-4867		4a. Article Number	
	5. Received By: (Print Name) Charles Bryant		4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
	6. Signature: (Addressee or Agent) X 		7. Date of Delivery 7/6	
		8. Addressee's Address (Only if requested and fee is paid)		

Thank you for using Return Receipt Service



STATE OF FLORIDA

ATTACHMENT B

Commissioners  
JOE GARCIA, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.



DIVISION OF  
TELECOMMUNICATIONS  
WALTER D'HAESELEER  
DIRECTOR  
(850) 413-6600

## Public Service Commission

December 6, 1999

**CERTIFIED MAIL**

Charles Bryant  
General Manager  
First Touch, Inc.  
1036-48 Dunn Avenue  
Jacksonville, FL 32218-4867

Dear Mr. Bryant:

You did not respond to a certified letter from the Public Service Commission, dated July 1, 1999, requesting that you provide data by August 8, 1999 for inclusion in a Legislatively mandated report. In order to meet this Legislative mandate we must gather data from the industry. We must have data from every certificated ALEC in order to provide the Legislature with accurate and complete information on the status of competition in Florida. While we have already filed the required report with the Legislature, it is important that we have the information on your company prior to the 2000 Legislative Session. We are requesting that you **respond to the attached data request no later than December 22, 1999.**

Once data is received by the Commission, the information will become public record. If you believe your response to the data request contains confidential information, you can request that your response be exempt from Section 119.07(1), F.S., General State Policy on Public Records. Enclosed is Florida Public Service Commission Rule 25-22.006, Florida Administrative Code, which provides the necessary information for requesting confidential information to be exempt from Section 119.07(1), F.S.

Failure to provide a response to the enclosed data request can result in the Commission requiring you to show cause why you should not be assessed a penalty of up to \$25,000 per offense, where each day of non-compliance constitutes a separate offense, per Section 364.285(1), F.S.

ORDER NO. PSC-00-0747-SC-TX  
DOCKET NO. 000074-TX  
PAGE 11

ATTACHMENT B

Mr Bryant  
Page 2  
December 6, 1999

Your response may be sent via mail, or by facsimile to (850) 413-6549. If there are any questions, please call David Wolfe at (850) 413-6548 or Dave Dowds at (850) 413-6542.

Sincerely,

  
Walter D'Haeseleer  
Director of Telecommunications

Enclosure: 1999 ALEC Data Request

cc: David Wolfe, Division of Telecommunications

ATTACHMENT B

1999 ALEC Data Request

Florida Statute 364.02(2) defines basic local service as:

**'Basic local telecommunications service' means voice-grade, flat-rate residential and flat-rate single line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange company, such terms shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July, 1 1995.**

1.
  - a. Are you providing service to residential customers in Florida that complies with the above definition of basic local service?
  - b. To how many residential customers are you providing basic local service in Florida?
  - c. What are your current rates for providing residential basic local service?
  - d. Are you providing service to business customers in Florida that complies with the above definition of basic local service?
  - e. To how many business customers are you providing basic local service in Florida?
  - f. What are your current rates for providing business basic local service in Florida?
  
2. Are you currently providing other forms of local service (business or residential) in Florida that may not meet Florida's statutory definition of basic local service? (Examples could include: multiline business users; services with toll restrictions or usage; mandatory 900 blocking; limited amount of local calling included in the monthly charge; bundled service offerings; etc.)  
(If yes, continue with question #2; if no, skip to Question #3)
  - a. Are you currently providing other forms of local service to residential customers in Florida?
  - b. If the response to a. is affirmative, please describe the forms of local service you are providing to residential customers in Florida. (If available, please provide brochures or comparable materials.)
  - c. If the response to a. is affirmative, please indicate your current rates for the services indicated in response to b.
  - d. Are you currently providing other forms of local service to business customers in Florida?
  - e. If the response to d. is affirmative, please describe the forms of local service you are providing to business customers in Florida. (If available, please provide brochures or comparable materials.)
  - f. If the response to d. is affirmative, please indicate your current standard rates for the services indicated in response to e.

ATTACHMENT B

- 3
- a. Please describe the method(s) you are using to provide telephone services (e.g., resale, interconnection, unbundled network elements, facility-based, etc.)
  - b. For each exchange where you are providing any form of residential local telephone service, please identify by exchange (a list of exchanges is attached), the number of residential access lines served. (See example below)
  - c. For each exchange where you are providing any form of business local telephone services, please identify by exchange (a list of exchanges is attached), the number of business access lines served. (See example below)

*Examples*

<i>Miami Exchange:</i>	<i>Residential Access Lines - 154</i>	<i>Business Access Lines - 255</i>
<i>Yulee Exchange:</i>	<i>Residential Access Lines - 161</i>	<i>Business Access Lines - 202</i>

- d. For billing and accounting purposes, do you differentiate between residential and business customers?
  - e. Are you currently offering any enhanced services? If yes, what are they?
  - f. Have you experienced any significant barriers in entering Florida's local exchange markets? Please list and describe any obstacles or barriers encountered.
  - g. Have you experienced any difficulties involving any agreements you may have with incumbent LECs? If so, please describe any significant problems encountered.
  - h. Do you anticipate that your long-term manner of providing service will differ from your current practice? If so, do you expect becoming a full scale facilities-based provider?
  - i. Have you been assigned your own NXX codes? If yes, how many codes have you been assigned and for each code, as of June 30, 1999, how many numbers have been assigned from the code?
4. If you are not currently providing local telephone service in Florida:
- a. Please explain why you are not providing local telephone service. For example, have you experienced marketing or billing difficulties? Lack of capital? Customers are not willing to try something new? Lack of expertise in telecommunications? Difficulties dealing with the LECs? Insufficient profit margin?
  - b. Do you anticipate providing local telephone service at some future date? If yes, please indicate when. (e.g., first quarter 2000)
  - c. Please describe the most important factors that you believe are inhibiting your ability to provide local telephone service, and describe how these factors have adversely affected your entry.
  - d. Are you currently providing any other telecommunications services in Florida (i.e., other than local service)? If yes, please list the services provided.

ATTACHMENT B

5. Please list your primary line of business (for example, entertainment, cable television, private line/special access service, interexchange service, local service, cellular service, paging service, electric service, municipality, etc.).
6. At any time during the last 12 months have you provided local telephone services in Florida and then withdrawn the service? If yes, please discuss the reasons for this decision.
7. If you or an affiliate provides cable television in Florida, do you offer any package plans combining cable television and local telephone services? If so, please indicate where such packages are being offered.
8. If you or an affiliate provides long distance telephone service in Florida, do you offer any package plans combining long distance and local telephone services? If so, please describe any such plans and their terms and conditions. Is subscribing to both local telephone and long distance a condition of providing service?
9. If you or an affiliate's primary business is unrelated to the provision of telecommunications, please indicate the nature of such primary business(es). Examples of such businesses could include, but are not limited to: pawn shops, title loan companies, alternative automobile financing, internet service providers, or check cashing services.
10.
  - a. Please describe any actions available to the Florida Public Service Commission which you believe should be taken to foster local exchange competitive market entry.
  - b. Please describe any actions which you may believe should be taken by the Florida legislature that would foster local exchange competitive market entry.
11. Please provide any additional comments or information you believe will assist staff in evaluating and reporting on the development of local exchange competition in Florida. In particular, we are seeking comment on obstacles that you believe may be impeding the growth of local competition in the state and any suggestions you may have on how to remove such obstacles.
12. Please provide a copy of your (or your parent company's) most recent annual report to shareholders and Form 10-K.
13.
  - a. Please indicate your gross Florida intrastate operating revenues for the year ending 12/31/98. If available, please separate between residential and business.
  - b. Please indicate your company's 1998 assessable revenues, as reported for Florida revenue assessment fees.

State of Florida  
**Public Service Commission**  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

[REDACTED]

CERTIFIED

Z 362 335 7\*

MAIL



RETURNED TO  
SENDER  
NOT DELIVERABLE AS  
ADDRESSEE'S OFFICE TO  
FORWARD  
MAILING SECTION: JACKSONVILLE FL

~~Charles Brent  
General Manager  
First Touch, Inc.  
1036 W. Dunn Avenue  
Jacksonville, FL 32218-4867~~

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1837

[REDACTED]

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ATTACHMENT C