

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of
Alternative Local Exchange
Telecommunications Certificate
No. 5275 issued to USA Tele
Corp. for violation of Rule 25-
4.0161, F.A.C., Regulatory
Assessment Fees;
Telecommunications Companies.

DOCKET NO. 991980-TX
ORDER NO. PSC-00-1227-SC-TX
ISSUED: July 7, 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:

On November 24, 1997, we granted USA Tele Corp. Certificate No. 5275 to provide alternative local exchange service. On December 10, 1998, the company's 1998 regulatory assessment fee (RAF) notice was mailed. Payment was due by February 1, 1999. On March 17, 1999, our Division of Administration mailed a delinquency letter to the company. On January 12, 2000, we received a check for the 1999 RAF. The company reported revenues in the amount of \$8,200.95 for the period ended December 31, 1999. Thereafter, on March 16, 2000, our staff wrote the company and advised that although the 1999 RAF had been paid, the 1998 RAF remained unpaid and a statutory penalty and interest balance remained from 1997 and 1998. Our staff provided the company with information on how to resolve the matter. As of May 17, 2000, however, USA Tele Corp. has not paid the past due RAF, penalty and interest charges, or proposed a settlement.

DOCUMENT NUMBER-DATE

08227 JUL-78

FPSC-RECORDS/REPORTING



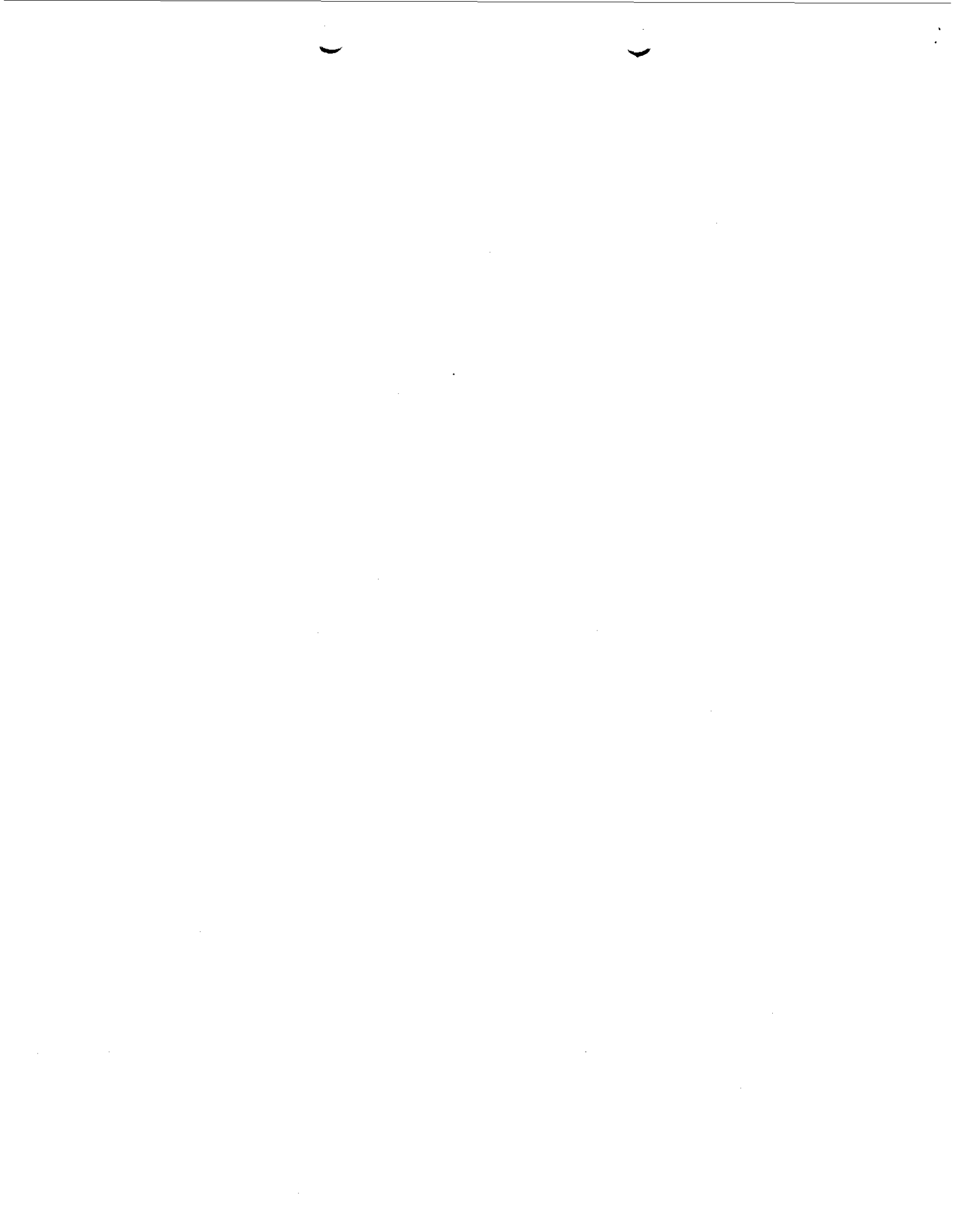
ORDER NO. PSC-00-1227-SC-TX
DOCKET NO. 991980-TX
PAGE 2

In a separate proceeding, in Docket No. 000234-TX, we issued Order No. PSC-00-0664-SC-TX on April 10, 2000, wherein we ordered the company to show cause why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. The company did not respond to the Show Cause Order; therefore, the company's certificate was canceled.

In view of the foregoing, it appears USA Tele Corp. has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. Rule 25-4.0161, Florida Administrative Code, requires the payment of Regulatory Assessment Fees (RAFs) 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. This rule is incorporated by reference into our rules applicable to alternative local exchange companies by Rule 25-24.835, Florida Administrative Code.

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 USA Tele Corp. conduct in failing to pay regulatory assessment fees, as well as past due statutory penalty and interest charges, in apparent violation of Rule 25-4.0161, Florida Administrative Code, 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 USA Tele Corp.'s conduct at issue here, would meet the standard for a "willful violation."

Accordingly, we find it appropriate to order USA Tele Corp. to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. USA Tele Corp.'s response shall contain specific allegations of fact and law. If USA Tele Corp. timely responds to the show cause order, this docket shall remain open pending resolution of the show cause proceeding. If USA Tele Corp. fails to respond to the show cause order, the fine shall be deemed assessed. If the fine is not paid within ten business days after this Order becomes final, the fine shall be forwarded to the Office of the Comptroller for further collection efforts. If the fine is paid, it shall be remitted by the Commission to 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 USA Tele Corp. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that any response to this Order to Show Cause filed by USA Tele Corp. 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 USA Tele Corp. 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 USA Tele Corp. 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, the fine shall be deemed assessed and forwarded to the Office of the Comptroller for collection, and this docket shall be closed.



ORDER NO. PSC-00-1227-SC-TX
DOCKET NO. 991980-TX
PAGE 4

By ORDER of the Florida Public Service Commission this 7th day
of July, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

KMP/BK

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 July 28, 2000.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to



ORDER NO. PSC-00-1227-SC-TX
DOCKET NO. 991980-TX
PAGE 5

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.

