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May 3, 2000

ORIGINAL

## VIA HAND DELIVERY

Mrs. Blanca Bayo, Clerk  
PUBLIC SERVICE COMMISSION  
4075 Esplanade Way  
Tallahassee, FL 32399

Re: Docket Number 000229-TX

Dear Mrs. Bayo:

Enclosed please find an original and fifteen (15) copies of Burno, Inc. d/b/a Integra Paging's Response to Order to Show Cause (Order Number PSC-00-0678-SC-TX) in the subject case. Please "date stamp" as received the extra copy of the Response for our records.

Thank you for your assistance in this matter.

Very truly yours,

Allen R. Grossman

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cc: R. Dean Cannon, Jr., Esquire

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Burno Inc. d/b/a Integra Paging for apparent violation of Section 364.183(1), F.S., Access to Company Records /

DOCKET NO. 000229-TX  
ORDER NO. PSC-00-0678-SC-TX  
ISSUED: April 12, 2000

ORIGINAL

**RESPONSE TO ORDER TO SHOW CAUSE  
BY BURNO, INC., d/b/a INTEGRA PAGING**

COMES NOW BURNO, INC., d/b/a INTEGRA PAGING ("Integra") by and through its undersigned counsel, and files this its Response to the Order to Show Cause issued in the above-styled case, Order No. PSC-00-0678-SC-TX (hereinafter the "Order"), which was issued on April 12, 2000, and states:

**INTRODUCTION**

Integra is an ALEC certificated to operate in Florida pursuant to Certificate No. 5334. On April 12, 2000, the above-referenced Order was issued, directing Integra to show cause in writing within 21 days of the date of the Order why it should not be fined \$10,000 or have its certificate canceled for an alleged violation of Section 364.183(1), Florida Statutes. The Order contains the assertion that Integra "willfully" violated Section 364.183(1), Florida Statutes, because Integra failed to respond to two (2) requests for data by the Commission (hereinafter the "first data request" and the "second data request," respectively). As the facts set forth below indicate, Integra's conduct was not "willful" in the sense defined by Section 364.285, Florida Statutes, and in accordance with 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., Order No. 24306 (hereinafter "In Re: Investigation").

Because Integra's conduct in failing to provide the requested information was neither willful nor intentional, Integra asserts it should not be fined \$10,000.00. However, Integra admits that it failed to supply the requested information and Integra acknowledges payment of some fine may be appropriate. Integra further affirmatively states that it has taken all necessary steps to assure timely compliance with all future requests for information from the Commission. Accordingly, Integra proposes payment of \$250.00 as a fine for its unintentional failure to supply the data requested by the Commission as set forth in the Order.

**FACTUAL BACKGROUND**

Integra is a small company headed by its president, Mr. Don Burno. In July, 1999, Mr. Burno signed for receipt of the Commission's first data request. Mr. Burno assigned the task of responding to the first data request to an officer/employee of Integra whom Mr. Burno believed

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FPSC-RECORDS/REPORTING

to be completely reliable. The officer/employee later assured Mr. Burno that the data request had been responded to and all information supplied as requested by the Commission.

After Mr. Burno received the second data request, he asked the same officer/employee of Integra who wrongfully told Mr. Burno that the first data request had been complied with earlier in 1999, and Mr. Burno was again told that the data requests had been complied with.

In early 2000, Mr. Burno terminated the officer/employee of Integra who had been assigned the task of responding to the Commission's first data request for, among other things, the officer/employee's failure to discharge responsibilities associated with preparing and processing corporate documents, records, and correspondence. Mr. Burno has also instituted a policy of reviewing and answering all official correspondence of Integra personally, so as to ensure that any future data requests are timely processed and responded to.

Because Mr. Burno had discovered (after the fact) that the officer/employee had mishandled the documents and concealed the misfeasance, Mr. Burno called the Commission on approximately March 29, 2000, to ask whether Integra was in compliance with regulatory filings and document requests of the Commission. Mr. Burno spoke with Tom Williams on approximately April 3, 2000, and Mr. Williams indicated to Mr. Burno that Integra was in compliance with all filings or requests for information to the best of Mr. Williams' knowledge; however, Mr. Williams suggested Mr. Burno contact Jackie Knight with the Commission to follow up and confirm Integra's compliance status.

On or about April 14, 2000, Integra received the Order to Show Cause, and presents this response in accordance with the requirements of that Order.

### ANALYSIS

Mr. Burno and Integra did not intend to violate Florida Statute Section 364.183(1), and also did not intend to fail to supply the information requested by the Commission. To the contrary, Mr. Burno assigned the task to someone he believed was a responsible officer/employee of Integra. The officer/employee affirmatively told Mr. Burno that the data request had been complied with. Unfortunately, Mr. Burno did not discover the failure to supply the requested information by the now terminated officer/employee until after the information requested by the Commission was needed.

Under either Florida Statute Section 364.285, or under the rationale of In Re: Investigation, the conduct of Integra was not "willful" as contemplated by the Statute, and imposition of a \$10,000.00 fine would not be appropriate under the law or the facts of this case. Mr. Burno has terminated the officer/employee of Integra responsible for the failure to supply the requested information, and has instituted a procedure that Mr. Burno individually will personally oversee all official correspondence of Integra, and he will personally oversee all requests for information from the Commission. Consequently, no future failures to supply requested information should occur.

While Burno asserts Integra's failure to supply the requested information was not willful, Integra recognizes that it failed to supply the requested information, and accordingly desires to pay a fine to account for its failure to supply the data requested by the Commission. Integra proposes payment of a fine of \$250.00 to the Commission for its unintentional failure to supply the information requested by the Commission.

**REQUEST FOR RELIEF**

Integra requests that it be permitted by the Commission to pay a fine of \$250.00 in light of Integra's unintentional failure to supply information required to be produced by Section 364.183(1), Florida Statutes, and in light of the fact that Mr. Burno has taken steps to assure that all future data requests and correspondence will be timely complied with. Integra respectfully requests this relief and requests a hearing before the Commission.

Respectfully submitted,

  

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