

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
00 MAY - 4 AM 9:28
RECORDS AND REPORTING

DATE: MAY 4, 2000

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

FROM: DIVISION OF LEGAL SERVICES (KEATING) BK
DIVISION OF COMMUNICATIONS (M. WATTS) MW

RE: DOCKET NO. 000235-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST TOTALTEL USA COMMUNICATIONS, INC. FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

AGENDA: 05/16/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000235.RCM

CASE BACKGROUND

- January 29, 1997 - TotalTel USA Communications, Inc. (TotalTel) obtained Florida Public Service Commission Alternative Local Exchange Company Certificate Number 4771.
- June 25, 1999 - Staff mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. Staff requested a response by August 6, 1999.
- July 7, 1999 - TotalTel signed for and received the certified letter.
- December 6, 1999 - Staff sent a second certified letter requesting TotalTel respond to the data request no later than December 22, 1999.

DOCUMENT NUMBER-DATE

05547 MAY-48

FPSC-RECORDS/REPORTING

DATE: May 4, 2000

- February 22, 2000 - After receiving no response to its June 25, 1999 and December 6, 1999 certified letters, staff opened this docket to investigate whether TotalTel should be required to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- March 28, 2000 - Docket No. 000235-TX was deferred from the March 28, 2000 Agenda Conference to the June 6, 2000 Agenda Conference at the request of the company.
- April 25, 2000 - TotalTel submitted an offer to settle this case. (Attachment A, page 4)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by TotalTel to resolve the apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(M. Watts)**

STAFF ANALYSIS: Staff sent a certified letter requesting information contained in company records to TotalTel on June 25, 1999, and requested a written response by August 6, 1999. Staff did not receive the requested information from TotalTel. Staff sent a second certified letter requesting the information to TotalTel on December 6, 1999, and requested a written response by December 22, 1999. Staff did not receive the requested information from TotalTel in apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. Therefore, on February 22, 2000, staff opened this docket to require TotalTel to show cause why it should not be fined or have its certificate canceled, pursuant to Section 364.285, Florida Statutes.

DATE: May 4, 2000

On March 24, 2000, TotalTel contacted staff to discuss the method for settlement of this case. On April 25, 2000, TotalTel submitted its offer to settle (Attachment A, page 4). In its settlement offer, TotalTel proposed a monetary settlement of \$3,500, stated that it understands the need to comply with requests for information by the Commission, and proposed to comply with future requests for information in a timely manner.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support TotalTel's offer of settlement. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$3,500 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled administratively, and this docket should be closed. (Keating)

STAFF ANALYSIS: This docket should remain open pending the remittance of the \$3,500 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled administratively, and this docket should be closed.



150 Clove Road, Little Falls, New Jersey 07424
973-785-7228 Fax: 973-237-6414 tgunning@totaltel.com

VIA FAX AND REGULAR MAIL

Thomas P. Gunning
Vice President
Secretary/Treasurer

April 25, 2000

Ms. Blanca Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000235-TX

Dear Director Bayó,

Pursuant to this morning's telephone conference call between myself and David Benamy of TotalTel and Melinda Watts and Beth Keating, of the Florida Public Service Commission staff, please accept this letter as a revised proposal of settlement for the above referenced Docket.

We understand the need to comply with requests for information and apologize for not complying with the request which prompted this docket. Please be assured that all future requests will be complied with in a timely manner.

TotalTel would like to make a monetary settlement offer of \$3,500.00.

Please advise us, upon the decision of the Public Service Commission, so that we may forward our payment to conclude this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas P. Gunning". The signature is fluid and cursive, written over a white background.

Thomas P. Gunning

TPG/csa