



Public Service Commission

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

DATE: June 30, 2000
TO: Steve Tribble, Director of Administration
FROM: Donna Clemons, Staff Counsel *DMC RK*
RE: Docket No. 000074-TX - 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.

On April 17, 2000, the Commission issued Order No. PSC-00-0747-SC-TX, in which it ordered First Touch, Inc. (First Touch), among other things, to show cause, in writing within 21 days, why it should not be fined \$500 for apparent violation of Rule 25-24.835, Florida Administrative Code, Records and Reports; Rules Incorporated.

Pursuant to the Order, failure to respond as provided constitutes an admission of the violations described in the Order, waiver of a right to a hearing, and results in the automatic assessment of the fines. Further, the Order provides that in the event that First Touch does not respond to the Order as provided for its apparent violation of Rule 25-24.835, Florida Administrative Code, and the fine is not paid within ten business days after the 21-day response period, the \$500 fine shall be forwarded to the Office of the Comptroller for collection.

First Touch did not timely respond to the Order, nor did it remit the \$500 fine. Therefore, we submit this matter to your office for approval to forward the account to the Department of Banking and Finance, Comptroller's Office, for further collection efforts or permission to write-off the account.

The events leading to our determination are outlined below for your convenience.

1. 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.

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 AUG
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FPSC-RECORDS/REPORTING

2. 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 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 was returned, marked "Returned to Sender. Not deliverable as addressed - unable to forward."

Please find the following attached hereto:

- (a) Order No. PSC-00-0747-SC-TX
- (b) State of Florida Office of the Comptroller Bureau of Auditing Delinquent Accounts Receivable Transmittal

First Touch's last known mailing address:

First Touch, Inc.
5340 Norwood Avenue
Jacksonville, FL 32208-5007

DMC

cc: Division of Records and Reporting
Division of Competitive Services (Watts, M.)

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

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.

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

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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

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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.

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

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed
copy of the order may be obtained by
calling 1-850-413-6770.

(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.

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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.

**STATE OF FLORIDA
OFFICE OF THE COMPTROLLER
BUREAU OF AUDITING
DELINQUENT ACCOUNTS RECEIVABLE TRANSMITTAL**

(PLEASE PRINT OR TYPE)

AGENCY: FLORIDA PUBLIC SERVICE COMMISSION

DATE: 6/30/00

CONTACT: EVELYN H. SEWELL, CHIEF, BUREAU OF FISCAL SERVICES

PHONE NUMBER: 413-6263

SAMAS ACCOUNT CODE:

61 74 1 000331 610000 00 001200

000074-TX First Touch, Inc.
AGENCY REFERENCE LAST NAME FIRST MIDDLE SOCIAL SECURITY NUMBER COMPTROLLER USE ONLY

5340 Norwood Avenue, Jacksonville, FL 32208-5007
LAST KNOWN ADDRESS (INCLUDE ZIP)

HOME TELEPHONE (904) 924-7404 \$500.00 \$00 \$500.00
WORK TELEPHONE PRINCIPLE AMOUNT PENALTY/INTEREST AMOUNT TOTAL

Rule 25-24.835, F.A.C. 4/17/00
PENALTY/INTEREST AUTHORITY DATE DEBT INCURRED DEBT TYPE

Show Cause Fine
DEBT DESCRIPTION, e.g., DRIVER LICENSE, SALARY OVERPAYMENT, PROPERTY DAMAGE

ADDITIONAL INFORMATION, e.g., DATE OF BIRTH, DRIVER LICENSE NUMBER, ETC.