

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Hayes Telecommunications Services, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

DOCKET NO. 010130-TX
ORDER NO. PSC-01-0522-SC-TX
ISSUED: March 6, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER INITIATING SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

Hayes Telecommunications Services, Inc. (Hayes or company) is an alternative local exchange company (ALEC) certificated to provide telecommunications services in the State of Florida. Hayes certification date is June 21, 1995 and its certificate was valid during the year 2000. On July 6, 2000, Hayes was mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission pursuant to Section 364.386, Florida Statutes. The return receipt card indicates that the certified letter was received at the company on July 7, 2000. As of January 22, 2001, Hayes had not responded to our staff's information request. We are vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.386, Florida Statutes.

DOCUMENT NUMBER-DATE

02933 MAR-06

PSC-RECORDS/REPORTING

SHOW CAUSE

As noted above, as of January 22, 2001, Hayes failed to respond to our staff's information request. Section 364.183(1), Florida Statutes, states, in part:

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.

Our staff requested the information in order for us to comply with Section 364.386, Florida Statutes, Reports to the Legislature. Section 364.386 (1), Florida Statutes, states:

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.

Based on the return receipt received from the United States Postal Service, it appears that Hayes 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.

By 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 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).

We find that Hayes refusal to allow our staff access to its company records by failing to respond to our staff's certified letter is in apparent violation of Section 364.183(1), Florida Statutes. Further, we find that Hayes apparent violation is "willful" within the meaning and intent of Section 364.285, Florida

Statutes. 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, 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.'

Hayes did not respond to the our request for information. Hayes has been certificated in Florida since June 21, 1995. Hayes has not reported any revenues and is apparently not providing telecommunications services in Florida. Nevertheless, Hayes is still subject to the Commission's rules and Florida Statutes governing ALECs. We find that the fine amount recommended is consistent with amounts used for recent, similar violations.

Therefore, we find it appropriate to order Hayes to show cause in writing within 21 days of the issuance of this Order, why it should not be fined \$10,000, or have its certificate canceled, for its failure to provide the Commission with access to information in accordance with Section 364.183(1), Florida Statutes. The company's response should contain specific allegations of fact and law. If the company fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, and remit the fine within ten business days after the 21-day show cause response period expires, than the facts shall be deemed admitted, the right to a hearing shall be deemed waived and the company's certificate shall be canceled. If the fine is paid, the fine shall be remitted by us 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 Hayes Telecommunications Services, Inc. shall show cause in writing within 21 days of the issuance of this Order, why it should not be fined \$10,000, or have its certificate canceled, for its failure to provide the Commission with access to information in accordance with Section 364.183(1), Florida Statutes. It is further

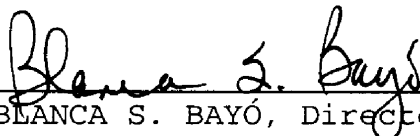
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ORDERED that Hayes Telecommunications Services, Inc.'s response shall contain specific allegations or fact and law. It is further

ORDERED that should Hayes Telecommunications Services, Inc. fail to respond to the show cause order or to request a hearing pursuant to Section 120.57, Florida Statutes, and remit the fine within ten business days after the 21-day show cause response period expires, than the facts shall be deemed admitted, the right to a hearing shall be deemed waived and the company's certificate shall be canceled. It is further

ORDERED that should Hayes Telecommunications Services, Inc. remit the fine, the fine shall be remitted by us to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

By ORDER of the Florida Public Service Commission this 6th day of March, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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 March 27, 2001.

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.

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.