

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against BN1 Telecommunications, Inc. for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 001224-TI  
ORDER NO. PSC-01-0543-SC-TI  
ISSUED: March 8, 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 TO SHOW CAUSE

BY THE COMMISSION:

On July 19, 1994, we granted BN1 Telecommunications, Inc. (BN1) Certificate No. 3567 to provide interexchange telecommunications service. On November 25, 1998, Docket No. 981732-TI was established for non-payment of the 1997 Regulatory Assessment Fee (RAF). On March 5, 1999, we received a settlement proposal from the company to resolve the docket. On April 5, 1999, the company paid the 1997 and 1998 RAFs. On August 4, 1999, Order No. PSC-99-1535-AS-TI was issued, which approved the company's settlement offer. On August 13, 1999, we received the company's \$100 settlement and the docket was closed. Subsequently, on August 24, 2000, this docket was opened for non-payment of the 1999 RAFs.

In the meantime, however, on May 5, 2000, in a separate proceeding, Docket No. 00614-TI was established. By Order No. PSC-2119-PAA-TI issued on November 7, 2000, we approved the assignment of BN1 Telecommunications, Inc.'s certificate to First Communications, LLC, effective December 1, 2000. BN1's 2000 RAFs were due on January 30, 2001.

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As of February 20, 2001, the date of the Commission vote, the past due 1999 and 2000 RAFs, including penalty and interest charges, remain unpaid. In view of the foregoing, it appears that BN1 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.

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 vs. United States, 32 U.S. 404, 411 (1833).

We believe that BN1's 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 did not intend to violate the rule the Commission nevertheless found it appropriate 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 BN1's conduct at issue here, would meet the standard for a "willful violation."

Accordingly, we find it appropriate to order BN1 to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$1,000 for apparent violation of Rule 25-

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4.0161, Florida Administrative Code. BN1's response shall contain specific allegations of fact and law. If BN1 timely responds to the show cause order, this docket shall remain open pending resolution of the show cause proceeding. If BN1 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. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BN1 Telecommunications, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$1,000 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 BN1 Telecommunications, Inc. shall contain specific allegations of fact and law. It is further

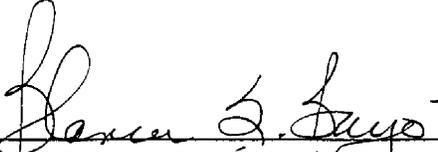
ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, as well as a waiver of the right to a hearing, and will result in the automatic assessment of the fine. It is further

ORDERED that if BN1 Telecommunications, Inc. 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 BN1 Telecommunications, Inc. fails to respond to this Order and the fine is not received within ten business days after the expiration of 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.

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By ORDER of the Florida Public Service Commission this 8th day of March, 2001.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

JAE

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 29, 2001.

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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.