

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 010124-TX  
ORDER NO. PSC-01-0592-SC-TX  
ISSUED: March 13, 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 6, 2000, TotalTel USA Communications, Inc. (TotalTel), along with other certificated ALECs, was mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. On July 10, 2000, the certified letter return receipt from the July 6, 2000, mailing was signed by TotalTel. To date, TotalTel has not responded to our staff. Accordingly, we find that further action is appropriate.

We are vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.386, Florida Statutes.

Specifically, 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

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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.

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.

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Based on the certified letter return receipt, it appears that TotalTel received the data request and could have responded. It is imperative that we receive full responses to our staff's data request in order to accurately reflect the status of local telecommunications competition to the Legislature and the Governor. Such response has not, however, been forthcoming from TotalTel.

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).

The conduct of TotalTel, by refusing to allow our staff access to company records, in apparent violation of Section 364.183(1), Florida Statutes, 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, 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." Thus, any intentional act, such as the conduct of TotalTel at issue here, would meet the standard for a "willful violation."

We note that this is TotalTel's second apparent violation of Section 364.183(1), Florida Statutes. In February 2000, our staff opened Docket No. 000235-TX against TotalTel to initiate show cause proceedings for apparent failure to provide the information contained in company records for inclusion in the 1999 local competition report for the Legislature. We approved TotalTel's settlement offer which included a contribution of \$3,500 to the General Revenue Fund and TotalTel's assurance that in the future it would timely respond to requests for information by the Commission.

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Because this is TotalTel's second apparent offense, we find that the proposed fine should be higher than the \$10,000 fine ordered for similar violations in comparable proceedings.

Therefore, we hereby order TotalTel to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 or have its certificate canceled for failure to provide the Commission access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records. The company's response should contain specific allegations of fact and law. If TotalTel fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If TotalTel pays the fine, it shall be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, Certificate No. 4771 shall be canceled and this Docket closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that TotalTel USA Communications, Inc. shall show cause in writing within 21 days from the issuance of this Order why it should not be fined \$10,000 or have its certificate canceled for failure to provide the Commission access to information in accordance with Section 364.183, Florida Statutes. It is further

ORDERED that TotalTel USA Communications, Inc.'s response shall contain specific allegations of fact and law. It is further

ORDERED that if TotalTel USA Communications, Inc. timely responds to this Order, this Docket shall remain open for further proceedings. It is further

ORDERED that if TotalTel USA Communications, Inc. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response

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period, the facts shall be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. It is further

ORDERED that if TotalTel USA Communications, Inc. pays the fine, it shall be remitted to the State of Florida General Revenue Fund, pursuant to Section 364.285, Florida Statutes, and this Docket shall be closed. It is further

ORDERED that if the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, Certificate No. 4771 shall be canceled and this Docket closed.

By ORDER of the Florida Public Service Commission this 13th Day of March, 2001.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( 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.

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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 April 3, 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.