



# Public Service Commission

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DIVISION OF RECORDS AND REPORTING

**DATE:** MARCH 22, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (KNIGHT) *WJK*  
DIVISION OF COMPETITIVE SERVICES (M. WATTS) *MWA*

**RE:** DOCKET NO. 010134-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST NETWORK MULTI-FAMILY SECURITY CORPORATION D/B/A PRIORITY LINK FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

**AGENDA:** 04/03/01 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\010134.RCM

### CASE BACKGROUND

- April 2, 1997 - Network Multi-Family Security Corporation d/b/a Priority Link (Priority Link) obtained Florida Public Service Commission Alternative Local Exchange Company (ALEC) certificate number 4761.
- July 6, 2000 - Priority Link 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.
- January 30, 2001 - Staff opened this docket to initiate show cause proceedings against Priority Link for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.

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- March 16, 2001 - As of this date, Priority Link has not responded to Commission staff.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.386, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission order Network Multi-Family Security Corporation d/b/a/ Priority Link to show cause why it should not be fined \$10,000 or certificate number 4761 should not be canceled for apparent failure to provide the Commission access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records?

**RECOMMENDATION:** Yes. The Commission should order Network Multi-Family Security Corporation d/b/a/ Priority Link 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 certificate number 4761 canceled for apparent 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 Network Multi-Family Security Corporation d/b/a/ Priority Link 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 should be deemed admitted, the right to a hearing should be deemed waived and the fine should be deemed assessed. If the fine is not paid within 10 business days after the end of the 21-day response period, then, in lieu of the fine, certificate number 4761 should be canceled administratively. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.  
**(M. Watts)**

**STAFF ANALYSIS:** Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. 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.

Staff mailed a certified letter to Priority Link on July 6, 2000. To date, no response from Priority Link has been received at the Commission. It is imperative that the Commission receive 100% participation to accurately reflect the status of local telecommunication competition to the Legislature and the Governor. Staff requested the information in order to comply with Section 364.386, Florida Statutes, Reports to the Legislature. 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.

By 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).

The recommended fine amount is consistent with previous amounts used for recent similar violations in Docket Nos. 000219-TX, Initiation of show cause proceedings against Worldlink Long Distance Corp. for apparent violation of Section 364.183(1), F.S., Access to Company Records, and 000234-TX, Initiation of show cause proceedings against USA Tele Corp. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

Staff believes that the conduct of Priority Link, by refusing to allow 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 Priority Link at issue here, would meet the standard for a "willful violation."

As stated in the above paragraphs, Priority Link did not respond to staff's request for information. Priority Link has been certificated in Florida since 1997. Priority Link has not reported any revenue and is apparently not providing telecommunications services in Florida. Nevertheless, it is still subject to the Commission's rules and Florida Statutes governing Alternative Local Exchange Companies. The certified letter return receipt was not received by the Commission. The United States Postal Service mailing labels were generated using the information in the Commission's Master Commission Directory (MCD). Priority Link is clearly identified as an ALEC in the MCD and mailing labels were automatically generated for certified letters to all ALECs identified in the MCD.

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Therefore, staff recommends that the Commission order Network Multi-Family Security Corporation d/b/a/ Priority Link 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 certificate number 4761 canceled for apparent 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 Network Multi-Family Security Corporation d/b/a/ Priority Link 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 should be deemed admitted, the right to a hearing should be deemed waived and the fine should be deemed assessed. If the fine is not paid within 10 business days after the end of the 21-day response period, then, in lieu of the fine, certificate number 4761 should be canceled administratively. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. If staff's recommendation in Issue 1 is approved and Network Multi-Family Security Corporation d/b/a Priority Link timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings.

Staff recommends that if Network Multi-Family Security Corporation d/b/a Priority Link fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, then certificate number 4761 should be canceled and this docket may be closed administratively. If Network Multi-Family Security Corporation d/b/a Priority Link pays the fine recommended in Issue 1, this docket should be closed.  
**(Knight)**

**STAFF ANALYSIS:** If staff's recommendation in Issue 1 is approved and Network Multi-Family Security Corporation d/b/a Priority Link timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings.

Staff recommends that if Network Multi-Family Security Corporation d/b/a Priority Link fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, then certificate number 4761 should be canceled and this docket may be closed administratively. If Network Multi-Family Security Corporation d/b/a Priority Link pays the fine recommended in Issue 1, this docket should be closed.