

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: APRIL 19, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (F. BANKS) *F. BANKS*
DIVISION OF COMPETITIVE SERVICES (M. WATTS) *M. WATTS*

RE: DOCKET NO. 010124-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST TOTALTEL USA COMMUNICATIONS, INC. FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

AGENDA: 05/1/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010124AS.RCM

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CASE BACKGROUND

- January 29, 1997 - TotalTel USA Communications, Inc. (TotalTel) obtained Florida Public Service Commission Alternative Local Exchange Company (ALEC) Certificate Number 4771.
- February 22, 2000 - Staff opened Docket No. 000235-TX against TotalTel to initiate show cause proceedings for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records for failure to provide staff with information contained in company records necessary for inclusion in the 1999 local competition report to the Legislature.
- March 16, 2000 - Staff filed a recommendation to order TotalTel to show cause in writing why it should not be fined \$10,000 or have its ALEC certificate canceled for apparent

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REC-REC-REC-REPORTING

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violation of Section 364.183(1), Florida Statutes, for presentation at the March 28, 2000, Agenda Conference.

- May 23, 2000 - The Commission issued Order No. PSC-00-1023-AS-TX approving a \$3,500 settlement offer submitted by TotalTel in Docket No. 000235-TX.
- June 5, 2000 - The Commission received TotalTel's check for \$3,500 to settle Docket No. 000235-TX.
- July 6, 2000 - TotalTel was mailed a certified letter requesting information contained in company records for inclusion in the 2000 local competition report to the Legislature. The information was to be provided by August 11, 2001.
- July 11, 2000 - TotalTel signed the return receipt from the July 6, 2000, certified letter.
- January 30, 2001 - Staff did not receive the information requested in the July 6, 2000, mailing; therefore, staff opened this docket to initiate show cause proceedings against TotalTel for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records for failure to provide staff with information contained in company records necessary for inclusion in the 2000 local competition report to the Legislature.
- February 20, 2001 - This docket was presented to the Commission at the Agenda Conference.
- March 13, 2001 - The Commission issued Show Cause Order No. PSC-01-0592-SC-TX requiring TotalTel to show cause why it should not be fined or have its certificate canceled for violation of Section 364.183(1), Florida Statutes.
- April 3, 2001 - TotalTel submitted an offer of settlement (Attachment A, pages 6-7).

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 accept the settlement offer proposed by TotalTel USA Communications, Inc. to resolve the apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 4771 should be canceled administratively.
(M. Watts)

STAFF ANALYSIS: Staff sent a certified letter requesting information contained in company records to TotalTel on July 6, 2000, and requested a written response by August 11, 2000. Staff did not receive the requested information from TotalTel in apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. Therefore, on January 30, 2001, staff opened this docket to require TotalTel to show cause why it should not be fined or have certificate number 4771 canceled, pursuant to Section 364.285, Florida Statutes. On March 13, 2001, Show Cause Order No. PSC-01-0592-SC-TX was issued requiring the company to show cause why it should not be fined or have its certificate canceled for violation of Section 364.183(1), Florida Statutes.

On April 3, 2001, staff received TotalTel's settlement offer (Attachment A, pages 6-7). In its settlement offer, TotalTel explained that it did not respond to staff's questionnaire because it is not yet providing service in Florida and believed it did not need to do so. It also did not provide the proper contact information to the Commission. To settle this docket, it stated that it is now aware of its reporting requirements and proposed the following:

- A monetary settlement of \$7,000;
- To ensure that the company contact information filed with the Commission is correct; and
- To file all required reports with the Commission in a timely manner.

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In the settlement offer for the previous show cause action against TotalTel (Docket No. 000235-TX), the company stated that its failure to provide the data requested for inclusion in the 1999 local competition report to the Legislature was the result of an administrative error. To correct this, it stated that future requests would be complied with in a timely manner.

However, for the 2000 local competition report to the Legislature, the company's failure to respond was a result of its failure to promptly update its contact information. With the correction of these deficiencies, staff believes that future occurrences of this apparent violation will be avoided.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support TotalTel's offer of settlement. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 4771 should be canceled administratively.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$7,000 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 4771 should be canceled administratively, and this docket should be closed. **(F. Banks)**

STAFF ANALYSIS: This docket should remain open pending the remittance of the \$7,000 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 4771 should be canceled administratively, and this docket should be closed.

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April 2, 2001

VIA OVERNIGHT DELIVERY

Ms. Blanca Bayo
Florida Public Service Commission
Division of Records & Reporting
2540 Shumard Oak Blvd.
Gunter Bldg.
Tallahassee, Florida 32399-0850

Re: TotalTel USA Communications, Inc.
Docket No. 010124-TX

Dear Ms. Bayo:

I am writing this letter in order to present a settlement offer on behalf of the company in the above-referenced docket.

This docket was opened because of the company's failure to provide the Commission access to information in accordance with Section 634.183(1), Florida Statutes. Specifically, the company did not provide information regarding its ALEC operations in the State of Florida. Since the company is not yet providing such services in Florida, it did not believe that it had to file such information. In addition, the company did not update its point of contact for such reports with the Commission.

The company has outsourced its regulatory compliance to a company called Telecom Compliance Services, Inc. ("TCS"). The company's usual contact for ongoing regulatory compliance matters is TCS, including the Commission's Regulatory Assessment Fee Returns ("RAF"). In this instance, the report in question was sent to a contact at the company. In the future, the contact person for the company should be:

Chris Stockhoff, VP of Operations
C/o Telecom Compliance Services, Inc.
6455 E. Johns Crossing, Suite 200
Duluth, GA 30097
(888) 603-3300

This information is being filed under separate cover.

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In the future, the company will have the proper contact designated. In addition, the company and its contact are aware of its reporting requirements to the Commission, and any such reports will hereafter be filed in a timely manner.

In light of the foregoing, the company believes that it should not be fined \$25,000 or have Certificate Number 4771 canceled, but rather, the company hereby offers \$7,000 to the Commission in lieu of the fine to be remitted to the State of Florida General Revenue Fund.

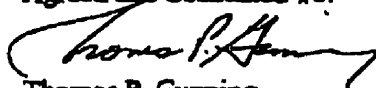
If you have any questions regarding the foregoing, please do not hesitate to call me. Thank you for your attention to this matter.

Sincerely,



Lance J.M. Steinbart, Esq.
Attorney for TotalTel USA Communications, Inc.

Agreed and Consented To:



Thomas P. Gunning
~~Controller~~ CFO

cc: Karen Ryan