



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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MAY 17 11:18 AM '01
PSC

DATE: MAY 17, 2001

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) BK
DIVISION OF COMPETITIVE SERVICES (K. CRAIG) (K) (K)

RE: DOCKET NO. 010126-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST WIRELESS ONE NETWORK, L.P. D/B/A CELLULAR ONE OF SOUTHWEST FLORIDA FOR APPARENT VIOLATION OF SECTION 364.183 (1), F.S., ACCESS TO COMPANY RECORDS.

AGENDA: 05/29/01 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010126.RCM

CASE BACKGROUND

- July 25, 1997 - Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida (Cellular One) obtained Florida Public Service Commission Alternative Local Exchange Telecommunications Certificate No. 5181.
- July 6, 2000 - Staff mailed a certified letter requesting information necessary for inclusion in the 2000 local competition report required of the Commission by Section 364.386, Florida Statutes. Staff requested a response by August 10, 2000.
- July 11, 2000 - A representative from Cellular One signed for and received the certified letter. (Attachment A, page 8)
- January 30, 2001 - After receiving no response to its July 6, 2000, certified letter, staff opened this docket to initiate

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FPSC-RECORDS/REPORTING

show cause proceedings against Cellular One for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.

- February 8, 2001 - Staff filed a recommendation for the February 20, 2001 Agenda Conference.
- February 16, 2001 - Staff received a fax from Cellular One requesting deferral from the February 20, 2001, Agenda Conference to allow time for the company to negotiate a settlement with staff (Attachment B, page 9). Cellular One's request for deferral of Item 27, Docket No. 010126-TX, on the February 20, 2001 Agenda Conference was approved by the Chairman.
- March 12, 2001 - Staff made contact with Mr. Francis Heaton, of Cellular One, to establish a time to continue settlement discussions. Mr. Heaton informed staff that he would follow-up with staff the next day, but no response was received by the company.
- March 20, 2001 - Staff again contacted Mr. Heaton, of Cellular One, in an attempt to negotiate a settlement, but was told that company personnel needed to confer and would contact staff. Again, staff received no response from the company.
- May 8, 2001 - Since a settlement had not been reached, staff left a phone message with Mr. Heaton, of Cellular One, to inform him of staff's intentions to continue with the original show cause recommendation. The company did not return the phone call.

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 Cellular One to show cause why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records?

RECOMMENDATION: Yes. The Commission should order Cellular One 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 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 Cellular One 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 Cellular One pays the fine, it should 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. 5181 shall be canceled and this docket closed. **(B. Keating/K. Craig)**

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.

Based on the certified letter return receipt staff received from the United States Postal Service (Attachment A, page 8), it appears that Cellular One received the data request and could have responded. Staff requested the information in order to comply with Section 364.386, Florida Statutes, Reports to the Legislature, which states in part:

(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).

Staff believes that the conduct of Cellular One, 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 of the company at issue here, would meet the standard for a "willful violation."

Cellular One did not respond to the Commission's request for information. The company has been certificated in Florida since July 25, 1997, however it has not reported any revenues 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 (ALECs). The fine amount recommended is consistent with amounts used for recent, similar violations.

On February 8, 2001, staff filed a recommendation for the February 20, 2001, Agenda Conference. Cellular One's request for deferral from the February 20, 2001, Agenda Conference (Attachment B, page 9) was approved by the Chairman on February 16, 2001. The company requested a deferral of this item in order to negotiate a settlement with staff to resolve the issues associated with this docket. However, staff has contacted Cellular One on many occasions to continue settlement discussions, but the company has made no substantial effort on its part to settle this docket.

Therefore, staff recommends that the Commission should order Cellular One 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 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 Cellular One 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 Cellular One pays the fine, it should be remitted to the State of Florida General Revenue Fund pursuant to

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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. 5181 shall be canceled and this docket closed.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation on Issue 1 is approved and Cellular One timely responds to the show cause order, this docket should remain open pending the resolution of the show cause proceedings.

Staff recommends that if Cellular One 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, the company's certificate should be canceled and this docket may be closed administratively. If the company pays the fine recommended in Issue 1, the docket should be closed. **(B. Keating)**

STAFF ANALYSIS: If staff's recommendation on Issue 1 is approved and Cellular One timely responds to the show cause order, this docket should remain open pending the resolution of the show cause proceedings.

Staff recommends that if Cellular One 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, the company's certificate should be canceled and this docket may be closed administratively. If the company pays the fine recommended in Issue 1, the docket should be closed.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cellular One of Southwest Florida
2100 Electronics Lane
Ft. Myers, FL 33912-1605

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

[Handwritten Signature]

Agent
 Addressee

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)

7099 3400 0004 3010 1490

WIRELESS ONE

NETWORK

VIA FAX TO 850-413-6547
ATTN: KRISTEN CRAIG

MR. WALTER D'HAESELEER
DIRECTOR OF COMPETITIVE SERVICES
PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD.
TALLAHASSEE, FL 32399-0850

RE: DOCKET NO. 010126 - TX - WIRELESS ONE NETWORK, L.P.
(NOW KNOWN AS WIRELESS ONE NETWORK MANAGEMENT L.P.
SEE DOCKET NO. 001522-TP; ORDER NO. PSC-01-0109-CO-TP)

DEAR MR D'HAESELEER:

WIRELESS ONE NETWORK MANAGEMENT L.P.(WIRELESS ONE) , SUCCESSOR IN INTEREST TO WIRELESS ONE NETWORK L.P.'S ALEC CERTIFICATE HEREBY REQUESTS A DEFERRAL OF THE STAFF RECOMMENDATION IN DOCKET NO. 0010126 -TX NOW SCHEDULED FOR THE COMMISSIONS FEBRUARY 20, 2001 CONFERENCE AGENDA.

THE DEFERRAL IS REQUESTED TO ALLOW WIRELESS ONE TO ENDEAVOR A NEGOTIATED SETTLEMENT WITH STAFF FOR IT'S FAILURE TO TIMELY COMPLY WITH COMMISSION REQUIREMENTS. WIRELESS ONE'S NON COMPLIANCE WAS AN OVERSIGHT FOR WHICH WE APOLOGIZE. WE HAVE INITIATED A "COMPLIANCE CALENDER" TO ASSURE FUTURE COMPLIANCE TO ALL FLORIDA PUBLIC SERVICE COMMISSION REQUIREMENTS.

YOURS TRULY


FRANCIS J. HEATON
DIRECTOR - EXTERNAL AFFAIRS

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PUBLIC SERVICE COMMISSION