

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 010126-TX  
ORDER NO. PSC-01-1314-SC-TX  
ISSUED: June 18, 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:

I. Case Background

On July 25, 1997, Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida (Cellular One) obtained from this Commission Alternative Local Exchange Telecommunications Certificate No. 5181. On July 6, 2000, our staff mailed a certified letter requesting information necessary for inclusion in the 2000 local competition report required of this Commission by Section 364.386, Florida Statutes. A response was requested by August 10, 2000. On July 11, 2000, a representative from Cellular One signed for and received the certified letter.

After receiving no response to its July 6, 2000, certified letter, on January 30, 2001, our staff opened this docket to initiate show cause proceedings against Cellular One for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. On February 8, 2001, our staff filed a recommendation regarding this matter for our consideration at the

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February 20, 2001 Agenda Conference. Thereafter, on February 16, 2001, our 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. Cellular One's request for deferral was approved.

On March 12, 2001, our staff made contact with Mr. Francis Heaton, of Cellular One, to establish a time to continue settlement discussions. Mr. Heaton informed our staff that he would follow-up the next day, but no response was received by the company. Then, on March 20, 2001, our staff again contacted Mr. Heaton, of Cellular One, in an attempt to negotiate a settlement, but was told that company personnel needed to additional time to confer and would contact our staff at a later time. Again, our staff received no response from the company.

As of May 8, 2001, no settlement had been reached; therefore, our staff left a phone message with Mr. Heaton, of Cellular One, to inform him of their intentions to continue with the original show cause recommendation to us. The company did not return the phone call.

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

## II. Show Cause

Pursuant to Section 364.285, Florida Statutes, we may impose a fine or cancel a certificate if a company refuses to comply with our 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 U.S. Postal Service certified letter return receipt our staff received, it appears that Cellular One received the data request sent to it by our staff and could have responded. Our staff requested the information in order to assist us in complying 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.

In accordance with Section 364.285, Florida Statutes, we are 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 this Commission, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our 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).

It appears to us that the conduct of Cellular One, 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, we 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 our staff's request for information. We emphasize that our 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. 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 our rules and Florida Statutes governing Alternative Local Exchange Companies (ALECs).

For the foregoing reasons, we hereby order Cellular One to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 or have its certificate canceled for apparent failure to provide us with access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records. The company's response shall contain specific

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allegations of fact and law. If Cellular One fails to respond to this 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 will be remitted to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. If the company fails to respond to this Order, 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.

It is therefore,

ORDERED by the Florida Public Service Commission that Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 or have its certificate canceled for apparent failure to provide us with access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records. It is further

ORDERED that the company's response shall contain specific allegations of fact and law. It is further

ORDERED that if the company responds to this Order or requests a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, this Docket shall remain open pending further proceedings. It is further

ORDERED that if the company fails to respond to this 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. It is further

ORDERED that if the company pays the fine within ten business days after the expiration of the show cause response period, the fine will 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

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ORDERED that if the company fails to respond to this Order, 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.

By ORDER of the Florida Public Service Commission this 18th day of June, 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.

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 July 9, 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.