

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-

COMMISSION CLERK

JUL 25 PM 1:24

DATE: JULY 26, 2001

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

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

RE: DOCKET NO. 010136-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST TELEGLOBE BUSINESS SOLUTIONS INC. (N/K/A EMERITUS COMMUNICATIONS, INC.) FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

AGENDA: 08/07/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010136AS.RCM

CASE BACKGROUND

- August 29, 1996 - Teleglobe Business Solutions, Inc. (n/k/a eMeritus Communications, Inc.) obtained Florida Public Service Commission Alternative Local Exchange Company (ALEC) certificate number 4699.
- July 6, 2000 - Teleglobe Business Solutions, Inc. (TBS) was 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.
- July 10, 2000 - The certified letter return receipt from the July 6, 2000, mailing was signed for by TBS.
- January 30, 2001 - After receiving no response to its July 6, 2000, certified letter, staff opened this docket to initiate

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show cause proceedings against TBS for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. Also on this date, TBS reported it had no Florida operating revenue in 2000.

- March 14, 2001 - The Commission issued Order No. PSC-01-0623-SC-TX ordering TBS to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- July 10, 2001 - TBS submitted an offer of settlement (Attachment A, pages 6-8).

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

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Teleglobe Business Solutions, Inc. (n/k/a eMeritus 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 thirty 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. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 4699 should be canceled administratively. The company has agreed to waive any objection to the administrative cancellation of its certificate should it fail to pay in accordance with its settlement offer. If, however, there is a factual dispute as to the manner or level of compliance with any provision in the settlement, staff will bring the matter to the Commission for consideration. **(F. Banks/M. Watts)**

STAFF ANALYSIS: Staff sent a certified letter requesting information contained in company records to TBS on July 6, 2000, and requested a written response by August 10, 2000. Staff did not receive the requested information from TBS 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 TBS to show cause why it should not be fined or have certificate number 4699 canceled, pursuant to Section 364.285, Florida Statutes. On March 14, 2001, Show Cause Order No. PSC-01-0623-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 July 10, 2001, staff received TBS's settlement offer (Attachment A, pages 6-8). In its settlement offer, TBS explained that it was in the process of moving its headquarters when it received the Commission's data request. It further stated that its failure to provide the data was inadvertent in light of the fact that its parent company, Excel Telecommunications, Inc., provided the identical data for another Florida ALEC that it owns. To settle this docket, TBS proposes the following:

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- A monetary settlement of \$3,500; and
- To take steps to ensure that all Commission correspondence is handled promptly and in a coordinated fashion.

The proposed settlement amount of \$3,500 is consistent with the Commission's approval of the settlement offered in Docket No. 000239-TI, Initiation of Show Cause Proceedings Against Atlantic.Net Broadband, Inc. for Apparent Violation of Section 364.183(1), F.S., Access to Company Records.

Therefore, staff recommends that the Commission accept the company's settlement proposal. Any contribution should be received by the Commission within thirty 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. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 4699 should be canceled administratively. The company has agreed to waive any objection to the administrative cancellation of its certificate should it fail to pay in accordance with its settlement offer. If, however, there is a factual dispute as to the manner or level of compliance with any provision in the settlement, staff will bring the matter to the Commission for consideration.

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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 \$3,500 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 4699 should be canceled administratively, and this docket should be closed. **(F. Banks)**

STAFF ANALYSIS: With the approval of Issue 1, this docket should remain open pending the remittance of the \$3,500 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 4699 should be canceled administratively, and this docket should be closed.

KATZ, KUTTER, HAIGLER, ALDERMAN, BRYANT & YON

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July 10, 2001

Ms. Melinda Watts
Division of Competitive Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 010136-TX, Order No. PSC-01-0623-SC-TX, In Re: Initiation Of Show Cause Proceedings Against Teleglobe Business Solutions, Inc., For Apparent Violation Of Section 364.183(1), F.S., Access to Company Records.

Revised Settlement Offer

Dear Ms. Watts:

The purpose of this letter is to propose a revised settlement to the above show cause action.

The Show Cause Order

On March 14, 2001, the Commission initiated a show cause proceeding against Teleglobe Business Solutions, Inc. ("TBS" or the "Company") through the issuance of Order No. 01-0623-SC- TX ("Show Cause Order"). The basis of the Show Cause Order is that TBS's failure to respond to certain data requests issued by the Commission pursuant to Section 364.183(1), Florida Statutes, was "willful" or an act violating a Commission rule or order. As a consequence of this alleged violation, the Commission seeks to impose a penalty against TBS pursuant to Section 364.285(1), Florida Statutes. The data requests concerned the state of local competition in Florida and asked local service providers to assess the competitive climate and barriers to competition.

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TBS's Response

On April 4, 2001, TBS timely filed its Response and Memorandum in Opposition to FPSC's Order to Show Cause (and on April 5, 2001 an Amended Response) denying the allegation that any failure to respond to the Commission's request for information pursuant to section 364.183(1) was "willful" or an act violating a Commission rule or order for purposes of imposing penalties.

As reflected more fully in the Amended Response to Show Cause, any failure of TBS to respond to the staff's data request was inadvertent and was a result of the Company moving its headquarters from Virginia to Dallas, Texas. According to the Show Cause Order, two letters were sent to TBS at its Virginia offices, with the second sent by certified mail; according to the Show Cause Order, the letter was allegedly signed by someone on behalf of TBS. At about that time, TBS, upon receipt of correspondence on regulatory matters in its Virginia offices, began to routinely forward such correspondence on to its Dallas office transitioning this oversight activity from Reston, Virginia to Dallas. TBS simply does not know what became of either letter because the letters do not appear to have been received in Dallas.

What TBS does know, however, is that its management had the intent to file all required reports and responses. For example, TBS and its sister corporation – Excel Telecommunications, Inc. – began sharing regulatory management during the time of the transition. Excel did in fact respond to the Commission's request by submitting information identical to that which TBS would have submitted. Moreover, neither of these two ALECs provide local service in Florida.

TBS's failure to respond was, thus, the result of simple oversight. Such oversight occurred because of the relocation of its offices and the transfer of management responsibility. TBS apologizes for this inadvertent oversight. TBS has already taken steps to ensure that all Commission correspondence, be it directed to Excel Telecommunications or TBS, is handled promptly and in a coordinated fashion. For example, in the latter part of 2000 - well before the issuance of the Show Cause - the Company requested that the Commission direct all correspondence for Excel as well as TBS to Mr. Joel Ballew, a Director of Regulatory Affairs in Excel's Dallas offices.

Settlement Offer

In light of the above, TBS believes that the interests of the public, the Commission, and TBS itself can best be served through settlement of this matter. While TBS denies that it willfully failed to provide the data responses, TBS hereby offers

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to make a payment of \$3,500.00 to settle this proceeding.¹ Payment would be made within 30 days of the issuance date of the final order approving this offer.

TBS believes that, upon review, the Commission will find that accepting this offer is appropriate and in the public interest. The amount of the settlement offer reflects the mitigating factors in this case. Settlement avoids subjecting the Commission, its staff, and TBS to the unnecessary expense and inconvenience of administrative litigation.

TBS respectfully requests, therefore, that the Commission approve this offer of settlement on the bases stated herein, and that the Commission issue its final order effecting such acceptance and providing that, upon receipt of this payment, this docket be closed.

In response to the Commission's request, TBS states as follows:

TBS waives its objection to the administrative cancellation of its certificate in the event that its offer is accepted by the Commission and TBS fails to pay in accordance to the terms that it has offered.

Respectfully submitted,



Patrick K. Wiggins

ON BEHALF OF
TELEGLOBE BUSINESS SOLUTIONS INC.

¹ This offer does not constitute an admission that TBS has refused to comply with or has willfully violated any lawful rule or order of the Commission. Moreover, acceptance of TBS's offer of settlement will not constitute a finding by this Commission of any such violation.