



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECEIVED-FPSC
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RECORDS AND REPORTING

DATE: MARCH 16, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAF6)

FROM: DIVISION OF LEGAL SERVICES (CLEMONS) *OMC*
DIVISION OF COMMUNICATIONS (M. WATTS) *RM*

RE: DOCKET NO. 000074-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST FIRST TOUCH, INC. FOR APPARENT VIOLATION OF RULE 25-24.835, F.A.C., RULES INCORPORATED, AND SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

AGENDA: 03/28/00 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: KEEP WITH DOCKETS 000214-TX, 000222-TX AND 000233-TX ON AGENDA

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000074.RCM

CASE BACKGROUND

- May 26, 1998 - First Touch, Inc. certificated as an Alternative Local Exchange Company (ALEC).
- March 30, 1999 - First Touch, Inc. reported no revenues for calendar year 1998.
- July 1, 1999 - Staff sent a certified letter to First Touch, Inc. instructing it to provide data by August 8, 1999, for inclusion in a Legislatively mandated report on local competition.
- July 6, 1999 - Certified return receipt signed for by First Touch, Inc.'s General Manager (Attachment A, page 9).

DOCUMENT NUMBER-DATE

03378 MAR 16 8

FPSC-RECORDS/REPORTING

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- July 21 - August 12, 1999 - The Division of Consumer Affairs received three complaints against First Touch, Inc. To date, First Touch, Inc. has not responded to these complaints.
- December 6, 1999 - Staff sent a certified letter (Attachment B, pages 10-14) to First Touch, Inc. instructing it to respond to the data request no later than December 22, 1999.
- December 21, 1999 - Staff received the December 6, 1999, certified letter back marked: Returned to Sender. Not deliverable as addressed - unable to forward (Attachment C, page 15).

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order each First Touch, Inc. to show cause why it should not be fined \$10,000 or have certificate number 5621 canceled for 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 First Touch, Inc. 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 5621 canceled for 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 First Touch, Inc. 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 and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and certificate number 5621 should be canceled. 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: 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 return receipt (Attachment A, page 9) staff received from the initial data request, it appears that First Touch, Inc. received the data request and could have responded. 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).

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Staff believes that the conduct First Touch, Inc., 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 First Touch, Inc. at issue here, would meet the standard for a "willful violation."

First Touch, Inc. did not respond to the Commission's request for the above information. Therefore, staff recommends that the Commission order First Touch, Inc. 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 5621 canceled for 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 First Touch, Inc. 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 and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and certificate number 5621 should be canceled. 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 the Commission order First Touch, Inc. to show cause in writing why it should not be fined \$500 for apparent violation of Rule 25-24.835, Florida Administrative Code, Rules Incorporated?

RECOMMENDATION: Yes. The Commission should order First Touch, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$500 for apparent violation of Rule 25-24.835, Florida Administrative Code, Rules Incorporated. The company's response should contain specific allegations of fact and law. If First Touch, Inc. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, 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 ten business days after the order becomes final, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid, it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(M. Watts)**

STAFF ANALYSIS: First Touch, Inc. has an active Certificate of Public Convenience and Necessity to provide ALEC telecommunications services in Florida. Pursuant to Rule 25-24.480(2)(a) and (b), Florida Administrative Code, Records & Reports; Rules Incorporated, incorporated by reference in Rule 25-24.835, Florida Administrative Code, Rules Incorporated, each company is allowed 10 days after a change occurs to file updated information indicating any changes in the certificate holder's address (including street name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission. Mail sent to First Touch, Inc. was returned to the Commission by the USPS. It has been well over 10 days and staff has not been informed of the provider's correct mailing address, phone number, or liaison information, nor has the company requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code.

Therefore, staff recommends that the Commission order First Touch, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$500 for apparent violation of Rule 25-24.835, Florida Administrative Code, Rules Incorporated. The company's response should contain specific allegations of fact and law. If First Touch, Inc. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, 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 ten business days after the order becomes final, it should be forwarded to the Office

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of the Comptroller for collection. If the fine is paid, it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

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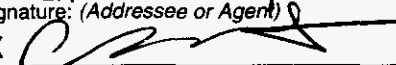
ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendations in Issues 1 and 2 are approved, they will remain open pending the outcome of the show cause proceedings. If First Touch, Inc. timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings.

Staff recommends that if First Touch, Inc. fails to respond to the Order to Show Cause for Issue 1 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, certificate number 5621 should be canceled and this docket may be closed administratively if all other issues are closed. If First Touch, Inc. fails to respond to the Order to Show Cause for Issue 2, the fine will be deemed assessed. If the fine is not received within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively if all other issues are closed. If First Touch, Inc. pays the fines recommended in Issues 1 and 2, this docket should be closed. (Clemons)

STAFF ANALYSIS: If staff's recommendations in Issues 1 and 2 are approved, they will remain open pending the outcome of the show cause proceedings. If First Touch, Inc. timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings.

Staff recommends that if First Touch, Inc. fails to respond to the Order to Show Cause for Issue 1 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, certificate number 5621 should be canceled and this docket may be closed administratively if all other issues are closed. If First Touch, Inc. fails to respond to the Order to Show Cause for Issue 2, the fine will be deemed assessed. If the fine is not received within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively if all other issues are closed. If First Touch, Inc. pays the fines recommended in Issues 1 and 2, this docket should be closed.

Is your RETURN ADDRESS completed on the reverse side?	SENDER: <ul style="list-style-type: none">■ Complete items 1 and/or 2 for additional services.■ Complete items 3, 4a, and 4b.■ Print your name and address on the reverse of this form so that we can return this card to you.■ Attach this form to the front of the mailpiece, or on the back if space does not permit.■ Write "Return Receipt Requested" on the mailpiece below the article number.■ The Return Receipt will show to whom the article was delivered and the date delivered.	I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
	Charles Bryant General Manager (904) 721-4821 or First Touch, Inc. 1036-48 Dunn Avenue Jacksonville, FL 32218-4867	4a. Article Number	
		4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
	5. Received By: (Print Name) Charles Bryant	7. Date of Delivery 7/6	8. Addressee's Address (Only if requested and fee is paid)
6. Signature: (Addressee or Agent) X 			

Thank you for using Return Receipt Service.



Commissioners:
JOE GARCIA, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.



DIVISION OF
TELECOMMUNICATIONS
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

December 6, 1999

CERTIFIED MAIL

Charles Bryant
General Manager
First Touch, Inc.
1036-48 Dunn Avenue
Jacksonville, FL 32218-4867

Dear Mr. Bryant:

You **did not respond to a certified letter** from the Public Service Commission, dated July 1, 1999, requesting that you provide data by August 8, 1999 for inclusion in a Legislatively mandated report. In order to meet this Legislative mandate we must gather data from the industry. We must have data from every certificated ALEC in order to provide the Legislature with accurate and complete information on the status of competition in Florida. While we have already filed the required report with the Legislature, it is important that we have the information on your company prior to the 2000 Legislative Session. We are requesting that you **respond to the attached data request no later than December 22, 1999.**

Once data is received by the Commission, the information will become public record. If you believe your response to the data request contains confidential information, you can request that your response be exempt from Section 119.07(1), F.S., General State Policy on Public Records. Enclosed is Florida Public Service Commission Rule 25-22.006, Florida Administrative Code, which provides the necessary information for requesting confidential information to be exempt from Section 119.07(1), F.S.

Failure to provide a response to the enclosed data request can result in the Commission requiring you to show cause why you should not be assessed a penalty of up to \$25,000 per offense, where each day of non-compliance constitutes a separate offense, per Section 364.285(1), F.S.

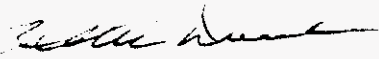
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ATTACHMENT B

Mr. Bryant
Page 2
December 6, 1999

Your response may be sent via mail, or by facsimile to (850) 413-6549. If there are any questions, please call David Wolfe at (850) 413-6548 or Dave Dowds at (850) 413-6542.

Sincerely,



Walter D'Haeseleer
Director of Telecommunications

Enclosure: 1999 ALEC Data Request

cc: David Wolfe, Division of Telecommunications

1999 ALEC Data Request

Florida Statute 364.02(2) defines basic local service as:

"Basic local telecommunications service" means voice-grade, flat-rate residential and flat-rate single line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange company, such terms shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July, 1 1995.

1.
 - a. Are you providing service to service to residential customers in Florida that complies with the above definition of **basic local service**?
 - b. To how many residential customers are you providing **basic local service** in Florida?
 - c. What are your current rates for providing residential **basic local service**?
 - d. Are you providing service to business customers in Florida that complies with the above definition of **basic local service**?
 - e. To how many business customers are you providing **basic local service** in Florida?
 - f. What are your current rates for providing business **basic local service** in Florida?

2. Are you currently providing other forms of local service (business or residential) in Florida that may not meet Florida's statutory definition of **basic local service**? (Examples could include: multiline business users; services with toll restrictions or usage; mandatory 900 blocking; limited amount of local calling included in the monthly charge; bundled service offerings; etc.)
(If yes, continue with question #2; if no, skip to Question #3)
 - a. Are you currently providing other forms of local service to residential customers in Florida?
 - b. If the response to a. is affirmative, please describe the forms of local service you are providing to residential customers in Florida. (If available, please provide brochures or comparable materials.)
 - c. If the response to a. is affirmative, please indicate your current rates for the services indicated in response to b.
 - d. Are you currently providing other forms of local service to business customers in Florida?
 - e. If the response to d. is affirmative, please describe the forms of local service you are providing to business customers in Florida. (If available, please provide brochures or comparable materials.)
 - f. If the response to d. is affirmative, please indicate your current standard rates for the services indicated in response to e.

3.
 - a. Please describe the method(s) you are using to provide telephone services (e.g., resale, interconnection, unbundled network elements, facility-based, etc.).
 - b. For each exchange where you are providing any form of residential local telephone service, please identify by exchange (a list of exchanges is attached), the number of residential access lines served. (See example below)
 - c. For each exchange where you are providing any form of business local telephone services, please identify by exchange (a list of exchanges is attached), the number of business access lines served. (See example below)

Examples

<i>Miami Exchange:</i>	<i>Residential Access Lines - 154</i>	<i>Business Access Lines - 255</i>
<i>Yulee Exchange:</i>	<i>Residential Access Lines - 161</i>	<i>Business Access Lines - 202</i>

- d. For billing and accounting purposes, do you differentiate between residential and business customers?
 - e. Are you currently offering any enhanced services? If yes, what are they?
 - f. Have you experienced any significant barriers in entering Florida's local exchange markets? Please list and describe any obstacles or barriers encountered.
 - g. Have you experienced any difficulties involving any agreements you may have with incumbent LECs? If so, please describe any significant problems encountered.
 - h. Do you anticipate that your long-term manner of providing service will differ from your current practice? If so, do you expect becoming a full scale facilities-based provider?
 - i. Have you been assigned your own NXX codes? If yes, how many codes have you been assigned and for each code, as of June 30, 1999, how many numbers have been assigned from the code?
4. If you are not currently providing local telephone service in Florida:
 - a. Please explain why you are not providing local telephone service. For example, have you experienced marketing or billing difficulties? Lack of capital? Customers are not willing to try something new? Lack of expertise in telecommunications? Difficulties dealing with the LECs? Insufficient profit margin?
 - b. Do you anticipate providing local telephone service at some future date? If yes, please indicate when. (e.g., first quarter 2000)
 - c. Please describe the most important factors that you believe are inhibiting your ability to provide local telephone service, and describe how these factors have adversely affected your entry.
 - d. Are you currently providing any other telecommunications services in Florida (i.e., other than local service)? If yes, please list the services provided.

5. Please list your primary line of business (for example, entertainment, cable television, private line/special access service, interexchange service, local service, cellular service, paging service, electric service, municipality, etc.).
6. At any time during the last 12 months have you provided local telephone services in Florida and then withdrawn the service? If yes, please discuss the reasons for this decision.
7. If you or an affiliate provides cable television in Florida, do you offer any package plans combining cable television and local telephone services? If so, please indicate where such packages are being offered.
8. If you or an affiliate provides long distance telephone service in Florida, do you offer any package plans combining long distance and local telephone services? If so, please describe any such plans and their terms and conditions. Is subscribing to both local telephone and long distance a condition of providing service?
9. If you or an affiliate's primary business is unrelated to the provision of telecommunications, please indicate the nature of such primary business(es). Examples of such businesses could include, but are not limited to: pawn shops, title loan companies, alternative automobile financing, internet service providers, or check cashing services.
10.
 - a. Please describe any actions available to the Florida Public Service Commission which you believe should be taken to foster local exchange competitive market entry.
 - b. Please describe any actions which you may believe should be taken by the Florida legislature that would foster local exchange competitive market entry.
11. Please provide any additional comments or information you believe will assist staff in evaluating and reporting on the development of local exchange competition in Florida. In particular, we are seeking comment on obstacles that you believe may be impeding the growth of local competition in the state and any suggestions you may have on how to remove such obstacles.
12. Please provide a copy of your (or your parent company's) most recent annual report to shareholders and Form 10-K.
13.
 - a. Please indicate your gross Florida intrastate operating revenues for the year ending 12/31/98. If available, please separate between residential and business.
 - b. Please indicate your company's 1998 assessable revenues, as reported for Florida revenue assessment fees.

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ATTACHMENT C



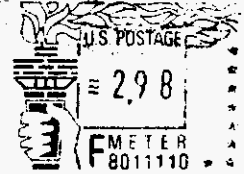
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State of Florida
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

CERTIFIED

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MAIL



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RETURNED TO SENDER
NOT DELIVERABLE AS
ADDRESS UNDELIVERABLE TO
FORWARD
NIXIE SECTION JACKSONVILLE FL

~~Charles Bryant
General Manager
First Touch, Inc.
103648 Dunn Avenue
Jacksonville, FL 32218-4867~~

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