

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against First Touch, Inc. for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 001418-TX  
ORDER NO. PSC-01-0593-SC-TX  
ISSUED: March 13, 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:

On May 26, 1998, we granted First Touch, Inc. (First Touch) Certificate No. 5275 to provide Alternative Local Exchange Telecommunications (ALEC) services. In Docket No. 000074-TX, we issued Order No. PSC-00-0747-SC-TX on April 17, 2000, wherein we ordered First Touch 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. We further ordered First Touch to show cause why it should not be fined \$500 for failure to provide the Commission with its updated address and telephone number as required by Rule 25-24.835, Florida Administrative Code. First Touch did not respond to the Show Cause Order; therefore, its certificate was canceled, effective October 6, 2000, and the docket was closed.

However, on December 8, 1999, First Touch's 1999 Regulatory Assessment Fee (RAF) notice was mailed. Payment was due by January 31, 2000. Our Division of Administration mailed a delinquency letter to First Touch on February 29, 2000. In addition, the 2000

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RAF was due by January 30, 2001, and as of January 31, 2001, both the 1999 and 2000 RAFs remain unpaid. Also, accrued statutory penalties and interest charges for late RAFs payments for the years 1999 and 2000 have not been paid.

In view of the foregoing, it appears First Touch, Inc. has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies. Rule 25-4.0161, Florida Administrative Code, requires the payment of RAFs by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. This rule is incorporated by reference into our rules applicable to ALECs by Rule 25-24.835, Florida Administrative Code. Because this docket, No. 001418-TX, was opened prior to cancellation of First Touch, Inc.'s certificate, we believe that a show cause is the appropriate method in the disposition of this matter.

Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, 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, Florida Statutes. 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).

We believe that First Touch's conduct in failing to pay regulatory assessment fees, as well as past due statutory penalty and interest charges, in apparent violation of Rule 25-4.0161, Florida Administrative Code, 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 titled In re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, 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

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act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as First Touch, Inc.'s conduct at issue here, would meet the standard for a "willful violation."

Accordingly, we find it appropriate to order First Touch to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. First Touch's response shall contain specific allegations of fact and law. If First Touch timely responds to the show cause order, this docket shall remain open pending resolution of the show cause proceeding. If First Touch fails to respond to the show cause order, the fine shall be deemed assessed and the right to a hearing shall be deemed waived. If the fine and fees are not paid within ten business days after this Order becomes final, they shall be forwarded to the Office of the Comptroller for further collection efforts. If the fine and fees are paid, the fine shall be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that First Touch, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that any response to this Order to Show Cause filed by First Touch, Inc. shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, as well as a waiver of the right to a hearing, and will result in the automatic assessment of the fine. It is further

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ORDERED that if First Touch, Inc. pays the fine and the fees, they shall 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

ORDERED that in the event First Touch, Inc. fails to respond to this Order and the fine and fees are not received within ten business days after the expiration to the show cause response period, the fine shall be deemed assessed and forwarded to the Office of the Comptroller for collection, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 13th Day of March, 2001.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By:

Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

KMP

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.

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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 April 3, 2001.

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.