

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Yipes Enterprise Services, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.	DOCKET NO. 050951-TX ORDER NO. PSC-06-0441-PAA-TX ISSUED: May 22, 2006
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION ORDER ACCEPTING SETTLEMENT OFFER  
FOR APPARENT VIOLATION OF SECTION 364.183(1), FLORIDA STATUTES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

**I. Case Background:**

On January 24, 2006, our staff opened Docket No. 050951-TX against Yipes Enterprise Services, Inc. (Yipes) for its apparent violation of Section 364.183(1), F.S., Access to Company Records. On June 3 and July 19, 2005, our staff sent certified letters via the United States Postal Service (U.S.P.S.) to Yipes requesting data contained in its company records for inclusion in the Florida Public Service Commission's (this Commission's) annual report to the Legislature on the status of local competition in Florida (local competition report). Yipes signed the return receipt card for the first certified letter, but our staff did not receive the company's response or the return receipt from the July 19, 2005, mailing.

Our staff's recommendation in Docket No. 050951-TX was presented to this Commission at the February 28, 2006, Agenda Conference. On March 20, 2006, Proposed Agency Action (PAA) Order No. PSC-06-0229-PAA-TX was issued by this Commission imposing a \$10,000 penalty on Yipes for its apparent violation of Section 364.183(1), Florida Statutes.

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

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**II. Analysis:**

On March 27, 2006, Yipes submitted an offer to settle the issue in this docket. In its letter, Yipes stated that it does not have a record of having received either of our staff's data requests. Yipes acknowledges that, since our staff received the U.S.P.S. return receipt for the June 3, 2005, letter, it apparently did receive the request and should have responded. However, since neither our staff nor Yipes has a record of the company receiving the second request, Yipes proposed the following:

- A monetary offer of \$1,000.00; and
- To take steps to ensure it timely files its response for the local competition report in the future, including putting the item on two separate internal regulatory calendars with automatic reminders.

We find the terms of the settlement agreement as summarized are fair and reasonable. We have found not to accept than \$3,500 to settle a first violation in these dockets. However, in Docket No. 000215-TX, In Re: Initiation of show cause proceedings against Smart City Networks for apparent violation of Section 364.183(1), F.S., Access to Company Records, this Commission voted to deny our staff's recommendation to reject the company's offer of \$1,000 on the basis that our staff did not receive the second return receipt and, thus, had no proof that the company had received the second request. The circumstances in Yipes' case are similar to those of the company in Docket No. 000215-TX.

**III. Decision:**

Therefore, we find it appropriate to accept Yipes Enterprise Services, Inc.'s settlement offer to voluntarily contribute \$1,000 for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), Florida Statutes. If no person, whose substantial interests are affected by the proposed actions files a protest of the Commission's decision on Issue 1 within the 21 day protest period, this Commission's Order will become final upon issuance of a Consummating Order. If this Commission's Order is not protested and Yipes complies with its settlement offer, this docket shall be closed administratively. If Yipes fails to remit the voluntary contribution of \$1,000 to this Commission within 30 days of the issuance of the Consummating Order, Certificate No. 7500 shall be canceled and this docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Yipes Enterprise Services, Inc.'s settlement offer to voluntarily contribute \$1,000 for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), Florida Statutes be accepted. It is further

ORDERED that if this Commission's Order is not protested and Yipes complies with its settlement offer, this docket shall be closed administratively. It is further

ORDERED that if Yipes fails to remit the voluntary contribution of \$1,000 to this Commission within 30 days of the issuance of the Consummating Order, Certificate No. 7500 shall be canceled and this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 22nd day of May, 2006.



BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( 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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 12, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.