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State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: February 17, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Isler) *Pje*
Office of the General Counsel (Rockette-Gray) *DLG PJ- MB*

RE: Docket No. 040861-TX – Compliance investigation of Phone 1 Smart LLC for
apparent violation of Rule 25-4.0161, FAC, Regulatory Assessment Fees;
Telecommunications Companies.

AGENDA: 03/01/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040861.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission accept the settlement offer proposed by Phone 1 Smart LLC to resolve the apparent violation of Section 364.336, Florida Statutes?

Recommendation: Yes. (Isler, Rockette-Gray)

Staff Analysis: See attached proposed Order.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Docket No. 040861-TX
Date: February 17, 2005

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$100 contribution or cancellation of the certificate. (Rockette-Gray)

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Phone 1
Smart LLC for apparent violation of Rule 25-
4.0161, FAC, Regulatory Assessment Fees;
Telecommunications Companies.

DOCKET NO. 040861-TX
ORDER NO.
ISSUED:

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

ORDER APPROVING SETTLEMENT

BY THE COMMISSION:

Pursuant to Section 364.336, Florida Statutes, competitive local exchange telecommunications companies must pay a minimum annual Regulatory Assessment Fee of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. All entities that apply for certification receive a copy of our rules governing competitive local exchange telecommunications service.

Phone 1 Smart LLC currently holds Certificate No. 8384, issued by this Commission on October 6, 2003, authorizing the provision of Competitive Local Exchange Telecommunications service. The Division of the Commission Clerk & Administrative Services advised our staff that Phone 1 Smart LLC had not paid the Regulatory Assessment Fee required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 2003. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, for the year 2003 had not been paid. The entity was scheduled to remit its 2003 Regulatory Assessment Fee by January 30, 2004. In addition, on May 7, 2004, our staff wrote the company and advised that payment of the 2003 Regulatory Assessment Fee should be paid by May 28, 2004, to avoid a docket from being established. On October 20, 2004, the company's consultant, Ms. Monique Byrnes, called staff and asked for the information required to resolve this docket. In addition, Ms. Byrnes asked that the 2003 and 2004 Regulatory Assessment Fee returns be e-mailed to her, which was done the same date. On November 19, 2004, the Commission received the company's 2003 and 2004 Regulatory Assessment Fee returns, along with full payment. On

December 3, 2004, the Commission received a letter from Ms. Byrnes on behalf of the company, which proposed to pay future Regulatory Assessment Fees on a timely basis and offered to pay a \$100 contribution to resolve this docket. This amount is consistent with amounts the Commission has accepted for recent, similar violations.

We believe that the terms of the settlement agreement represent a fair and reasonable resolution of this matter. Accordingly, we hereby accept the settlement offer. Phone 1 Smart LLC must comply with these requirements within 14 days from the date of issuance of this Order. The contribution should be identified with the docket number and the company name. Upon timely receipt, the contribution will be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. Upon remittance of the \$100 contribution or cancellation of the certificate, this docket shall be closed. If Phone 1 Smart LLC's certificate is cancelled in accordance with this Order, Phone 1 Smart LLC shall immediately cease and desist providing competitive local exchange telecommunications services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Phone 1 Smart LLC's settlement proposal set forth in the body of this Order is hereby approved. It is further

ORDERED that the settlement amount must be received within 14 days of the issuance of this Order. It is further

ORDERED that this docket shall remain open pending timely receipt of the \$100 contribution, which will be applied to the cost of collection. The contribution will be deposited in the Florida Public Service Regulatory Trust Fund. It is further

ORDERED that if Phone 1 Smart LLC fails to comply with this Order, its certificate will be cancelled administratively. It is further

ORDERED that if Phone 1 Smart LLC's certificate is cancelled in accordance with this Order, Phone 1 Smart LLC shall immediately cease and desist providing competitive local exchange telecommunications services in Florida. It is further

ORDERED that upon receipt of the \$100 contribution or cancellation of the certificate, this docket shall be closed.

By ORDER of the Florida Public Service Commission this _____ day of

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

(S E A L)

DRG

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas, or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.