

State of Florida



Public Service Commission

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COMMISSION CLERK

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

DATE: April 20, 2006

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

FROM: Division of Competitive Markets & Enforcement (M. Watts, Howell, Ollila)
Office of the General Counsel (Tan, Fordham)

Handwritten notes: "MWA", "H 10", "J 10", "L 10", "T Plan", "L 10"

RE: Docket No. 050951-TX – Compliance investigation of Yipes Enterprise Services, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

AGENDA: 05/02/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050951.RCM.DOC

Case Background

On January 24, 2006, 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, 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 (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 staff did not receive the company's response or the return receipt from the July 19, 2005, mailing.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Docket No. 050951-TX

Date: April 20, 2006

Staff's recommendation in Docket No. 050951-TX was presented to the 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 the Commission imposing a \$10,000 penalty on Yipes for its apparent violation of Section 364.183(1), Florida Statutes. This recommendation addresses Yipes' proposed settlement.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.386, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission accept Yipes Enterprise Services, Inc.'s settlement offer to voluntarily contribute \$1,000 to the Commission 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?

Recommendation: Yes, the Commission should accept the company's settlement proposal.
(M. Watts/Howell/Ollila/Fordham/Tan)

Staff 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 staff's data requests. Yipes acknowledges that, since 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 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.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable. Staff has consistently recommended that the Commission not accept less 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, the Commission voted to deny staff's recommendation to reject the company's offer of \$1,000 on the basis that 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. Therefore, staff recommends that the Commission accept Yipes Enterprise Services, Inc.'s settlement offer to voluntarily contribute \$1,000 to the Commission 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.

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Issue 2: Should this docket be closed?

Recommendation: 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, the Commission's Order will become final upon issuance of a Consummating Order. If the Commission's Order is not protested and Yipes complies with its settlement offer, this docket should be closed administratively. If Yipes fails to remit the voluntary contribution of \$1,000 to the Commission within 30 days of the issuance of the Consummating Order, Certificate No. 7500 should be canceled and this docket should be closed administratively. **(Fordham/Tan)**

Staff Analysis: Staff recommends that the Commission take actions as set forth in the above staff recommendation.