

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida for apparent violation of Section 364.183(1), F.S., Access to Company Records.

DOCKET NO. 010126-TX
ORDER NO. PSC-01-1627-AS-TX
ISSUED: August 8, 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 ACCEPTING SETTLEMENT OFFER

BY THE COMMISSION:

I. Case Background

On July 25, 1997, Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida (Cellular One) obtained from this Commission Alternative Local Exchange Telecommunications Certificate No. 5181. On July 6, 2000, our staff mailed a certified letter requesting information necessary for inclusion in the 2000 local competition report required of this Commission by Section 364.386, Florida Statutes. A response was requested by August 10, 2000. On July 11, 2000, a representative from Cellular One signed for and received the certified letter.

After receiving no response to its July 6, 2000, certified letter, on January 30, 2001, our staff opened this docket to initiate show cause proceedings against Cellular One for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. On February 8, 2001, our staff filed a recommendation regarding this matter for our consideration at the

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February 20, 2001 Agenda Conference. Thereafter, on February 16, 2001, our staff received a fax from Cellular One requesting deferral from the February 20, 2001, Agenda Conference to allow time for the company to negotiate a settlement. Cellular One's request for deferral was approved.

On March 12, 2001, our staff made contact with Mr. Francis Heaton, of Cellular One, to establish a time to continue settlement discussions. Mr. Heaton informed our staff that he would follow-up the next day, but no response was received by the company. Then, on March 20, 2001, our staff again contacted Mr. Heaton, of Cellular One, in an attempt to negotiate a settlement, but was told that company personnel needed to additional time to confer and would contact our staff at a later time. Again, our staff received no response from the company.

As of May 8, 2001, no settlement had been reached; therefore, our staff left a phone message with Mr. Heaton, of Cellular One, to inform him of their intentions to continue with the original show cause recommendation to us. The company did not return the phone call.

Thereafter, on June 18, 2001, we issued Order No. PSC-01-1314-SC-TX requiring Cellular One to show cause why it should not be fined \$10,000 or have its certificate canceled for its apparent violation of Section 364.183(1), Florida Statutes. On June 26, 2001, we received a call from a representative of Cellular One inquiring about the possibility of resolving the issues associated with this docket.

On June 29, 2001, our staff received a letter from Cellular One proposing a voluntary contribution of \$3,500 to resolve the case. Cellular One included a statement in which it waived the right to object to the administrative cancellation of its certificate in the event the settlement proposal is accepted and the company ultimately fails to pay in accordance with its settlement offer. Cellular One also added that if there is a factual dispute as to the manner or level of compliance with any provision in the settlement, it understands that our staff will bring the matter to us for our consideration.

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

II. Settlement

As stated above, in its letter received on June 29, 2001, Cellular One proposed a settlement offer, and also waived its right to object to the administrative cancellation of Certificate No. 5181 in the event we accept its settlement proposal, but the company subsequently fails to pay in accordance with its settlement offer. Cellular One also added that if there is a factual dispute as to the manner or level of compliance with any provision in the settlement, it understands that our staff will bring the matter to us for our consideration. Specifically, Cellular One proposed to make a voluntary contribution of \$3,500, and to ensure that all Commission communications will be routed to the administrative assistant to the Vice President, who will manage scheduling for each matter to assure a timely response.

We note that the settlement amount of \$3,500 is consistent with that which we have previously accepted in Order No. PSC-01-1145-AS-TX, issued May 21, 2001, in Docket No. 010130-TX, Initiation of Show Cause Proceedings Against Hayes Telecommunications Services, Inc. for Apparent Violation of Section 364.183(1), Florida Statutes, Access to Company Records.

Therefore, upon consideration, we hereby accept Cellular One's settlement proposal of a \$3,500 voluntary contribution and assurance that the company will implement measures to ensure future compliance. The voluntary contribution must be received by this Commission within ten business days of the issuance date of this Order and must include the docket number and company name. We shall forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. If the company fails to pay in accordance with the terms of this Order, Certificate No. 5181 shall be canceled administratively.

It is therefore

ORDERED by the Florida Public Service Commission that the settlement proposed by Wireless One Network, L.P. d/b/a Cellular

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One of Southwest Florida to resolve the issues identified in Order No. PSC-01-1314-SC-TX is hereby accepted. It is further

ORDERED that the \$3,500 voluntary contribution must be received by this Commission within 10 business days of the issuance of this Order and must clearly identify the pertinent docket number and the company's name. It is further

ORDERED that the contribution shall be forwarded to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that if the company fails to pay in accordance with the terms of this Order, Certificate No. 5181 shall be canceled administratively. It is further

ORDERED that this Docket shall be closed administratively either upon verification of our receipt of the \$3,500 voluntary contribution or cancellation of Certificate No. 5181 in accordance with the terms of this Order.

By ORDER of the Florida Public Service Commission this 8th Day of August, 2001.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
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 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.