

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation
of Smart City Networks for
apparent violation of Section
364.183(1), F.S., Access to
Company Records.

DOCKET NO. 020186-TX
ORDER NO. PSC-02-0592-PAA-TX
ISSUED: April 30, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING FINE OR CANCELING ALTERNATIVE LOCAL EXCHANGE
TELECOMMUNICATIONS CERTIFICATE

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. BACKGROUND

Smart City Networks (Smart City) obtained Florida Public Service Commission Alternative Local Exchange Company (ALEC) Certificate Number 5795 On March 13, 1999. On February 21, 2000, Docket No. 000215-TX was opened because the company failed to respond to our staff's request for information needed to complete the 1999 local competition report. We issued Order No. PSC-00-1134-AS-TX accepting Smart City's \$1,000 settlement offer to resolve their apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.

DOCUMENT NUMBER-DATE

04716 APR 30 2002

FPSO-COMMISSION CLERK

On July 6, 2001, our staff mailed a certified letter to Smart City requesting information necessary for inclusion in the 2001 local competition report which Section 364.386, Florida Statutes requires us to submit to the Legislature. Our staff requested a response by August 17, 2001. A Smart City representative signed the certified letter return receipt on July 9, 2001.

After receiving no response to its July 6, 2001 certified letter, our staff opened this docket to initiate a Compliance Investigation of Smart City for an apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. In its Regulatory Assessment Fee Filing, dated February 21, 2002, Smart City reported no intrastate revenues in 2001.

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

II. ANALYSIS AND FINDINGS .

Pursuant to Section 364.285, Florida Statutes, we may impose a penalty or cancel a certificate if a company refuses to comply with Commission rules or statutes. Section 264.183(1), Florida Statutes, Access to Company Records, states:

364.183 Access to company records. --

(1) The commission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the commission's jurisdiction. The commission shall also have access to those records of a local exchange telecommunications company's affiliated companies, including its parent company, that are reasonably necessary for the disposition of any matter concerning an affiliated transaction or a claim of anticompetitive behavior including claims of cross-subsidization and predatory pricing. The commission may require a telecommunications company to file records, reports or other data directly related to matters within the commission's jurisdiction in the form specified by the commission and may require such company to retain such information for a designated period of time. Upon request of the company or other person, any records received by

the commission which are claimed by the company or other person to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Based on the certified letter return receipt which we received from the United States Postal Service, Appendix A, which is attached and incorporated in this order, it appears that Smart City received the data request and could have responded. The information was requested to comply with Section 364.386, Florida Statutes, Reports to the Legislature, which states in part:

364.386 Reports to the Legislature. --

(1) The commission shall submit to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and the House of Representatives, on December 1, 1996, and on an annual basis thereafter, a report on the status of competition in the telecommunications industry and a detailed exposition of the following:

(a) The overall impact of local exchange telecommunications competition on the continued availability of universal service.

(b) The ability of competitive providers to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions.

(c) The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.

(d) The overall impact of price regulation on the maintenance of reasonably affordable and reliable high-quality telecommunications services.

(e) What additional services, if any, should be included in the definition of basic local telecommunications services, taking into account advances in technology and market demand.

(f) Any other information and recommendations which may be in the public interest.

It is imperative that we receive 100 percent participation in the local competition report to accurately report the status of local telecommunications competition to the Legislature.

Section 364.285, Florida Statutes, authorizes us to impose upon any entity subject to our jurisdiction, a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful Commission rule or order, or any provision of Chapter 364. Utilities are charged with knowledge of this Commission's rules and Florida statutes. Additionally, "it 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 the conduct of Smart City, by not providing our staff with access to company records, 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, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., 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, we nevertheless found it appropriate to order it to show cause why it should not be penalized, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as the conduct of Smart City, would meet the standard for a "willful violation."

This is the second docket that has been opened to initiate an investigation of Smart City for failure to provide information, in apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. Due to mitigating factors, the Commission accepted Smart City's settlement offer of \$1,000 for its first offense. Settlements accepted by the Commission in other dockets for the same apparent violation, were \$3,500 for the first offense. Since this is the company's second offense, we are imposing a penalty of \$5,000. If payment of the imposed penalty, including docket number and company name, is not received by us within 14 calendar days after issuance of the Consummating Order, Smart City's ALEC Certificate No. 5795 will be cancelled. The payment will be forwarded to the Office of the Comptroller for deposit in

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the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Smart City Networks is hereby fined \$5,000 for failure to comply with Section 364.183(1), Florida Statutes, Access to Company Records within 14 calendar days after the date of issuance of the Consummating Order. The fine will be transmitted to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

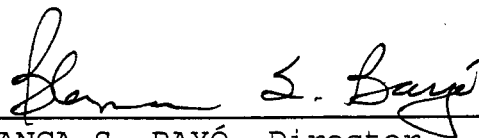
ORDERED that pursuant to Rule 25-24.820(1)(b), Florida Administrative Code, should Smart City Networks fail to comply with this Order, Smart City Network's Certificate No. 5795 shall be canceled, effective on the date of issuance of the Consummating Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is 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 the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed upon payment of the fine and fees, or upon cancellation of the certificate.

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By ORDER of the Florida Public Service Commission this 30th
Day of April, 2002.



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

(S E A L)

LHD

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.

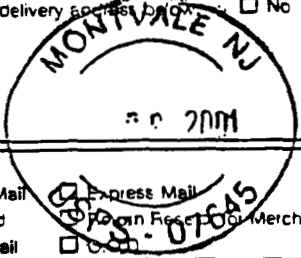
Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 May 21, 2002.

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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.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece or on the front if space permits. 	A. Received by (Please Print Clearly)	B. Date of Delivery 7/9
<p>1. Article Addressed to:</p> <p>Smart City Networks TX252 28 West Grand Avenue Montvale, NJ 07645-2132</p> <p style="text-align: right;">TX 252</p>	<p>C. Signature x <i>Jennifer Malin</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below.</p> <div style="text-align: center;">  </div>	
<p>2. Article Number (Copy from service label)</p> <p>7000 11 070 0012 8041 5204</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Other</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	