

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone for apparent violation of Section 364.183(1), F.S., Access to Company Records.	DOCKET NO. 060061-TX ORDER NO. PSC-06-0439-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, this Commission opened Docket No. 060061-TX against T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone (T3) 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 T3 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). T3 signed the return receipt card for the first certified letter, but our staff did not receive the company's response.

Our staff's recommendation in Docket No. 060061-TX to investigate T3's apparent violation of Section 364.183(1), Florida Statutes, was scheduled to be presented at the April 4, 2006, Agenda Conference. However, on March 9, 2006, T3 submitted a proposal to settle the issue in the docket.

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

II. Analysis:

On March 9, 2006, T3 submitted an offer to settle the issue in this docket. In its letter, T3 stated that when it received the first request, the company was experiencing both personnel changes and corruption of its electronic filing system that contributed to the company's oversight in responding to the data request. However, it did not receive the second request. Our staff's July 19, 2006, certified letter was returned by the U.S.P.S. as "unclaimed." T3 stated it is baffled by this because it occupied the same premises throughout this period. Given the circumstance that it never received the second letter, T3 proposed the following:

- A monetary offer of \$1,500.00; and
- To establish internal procedures to add the local competition report to its scheduling program and implement an "old-fashioned tickler file" as a backup to avoid a situation of this nature arising in the future.

We have found not to 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, this Commission voted to accept 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 T3's case are similar to those of the company in Docket No. 000215-TX.

III. Decision:

Therefore, we find it appropriate to accept T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone's settlement offer to voluntarily contribute \$1,500 to this 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. If this Commission's Order is not protested and T3 complies with its settlement offer, this docket shall be closed administratively. If T3 fails to remit the voluntary contribution of \$1,500 to this Commission within 30 days of the issuance of the Consummating Order, Certificate No. 8238 shall be canceled and this docket shall be closed administratively.

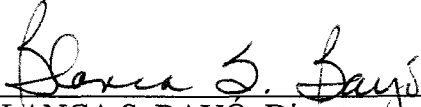
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone's settlement offer to voluntarily contribute \$1,500 to this 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 be accepted. It is further

ORDERED that if this Commission's Order is not protested and T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone complies with its settlement offer, this docket shall be closed administratively. It is further

ORDERED that if T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone fails to remit the voluntary contribution of \$1,500 to this Commission within 30 days of the issuance of the Consummating Order, Certificate No. 8238 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. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

TLT

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.

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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.