

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Vortex
Broadband Communications, Inc. for apparent
violation of Section 364.183(1), F.S., Access to
Company Records.

DOCKET NO. 050963-TX
ORDER NO. PSC-06-0445-FOF-TX
ISSUED: May 22, 2006

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

FINAL ORDER VACATING ORDER NO. PSC-06-0229-PAA-TX

BY THE COMMISSION:

I. Case Background

Section 364.386, Florida Statutes, requires the Florida Public Service Commission (this Commission) to submit a report to the Legislature on December 1st of each year on the status of local competition in the telecommunications industry. To obtain the data required to compile this report (hereinafter referred to as the "local competition report") each year, our staff mails data requests via United States Postal Service (U.S.P.S.) Certified Mail to all certificated incumbent and competitive local exchange telecommunications companies (ILECs and CLECs) in Florida in early June, with a response date due in mid-July. For the companies that do not respond by the due date, our staff sends a second letter via U.S.P.S. Certified Mail with a due date in the first week of August. Since there are several hundred active CLEC certificates each year (over 400 as of the date of this filing), our staff strongly encourages all companies to file these responses by the first week in August to be able to compile the report in a timely manner.

On June 3, 2005, our staff mailed the initial data request to Vortex Broadband Communications, Inc. (Vortex) with a due date of July 15, 2005. We did not receive Vortex's response by the due date. On July 19, 2005, our staff sent a second letter to Vortex with a due date of August 1, 2005. Again, we did not receive a response from Vortex by the due date. Both the June 3, 2005, and July 19, 2005, letters referenced Section 364.285(1), Florida Statutes, and notified the recipient of the possible consequences of failure to provide the requested information.

On February 28, 2006, we found in Docket No. 050963-TX to impose a penalty of \$10,000 on Vortex for apparent violation of Section 364.183(1), Florida Statutes, and on March

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20, 2006, issued Proposed Agency Action (PAA) Order No. PSC-06-0229-PAA-TX to impose the penalty.

On March 23, 2006, Vortex provided us call detail records indicating that the company sent its data request response to facsimile (850) 413-6403 on June 10, 2005. Telephone number (850) 413-6403 is one of three Commission facsimile numbers given to companies in our June 3, 2005, and July 19, 2005, data requests.

II. Analysis:

Pursuant to Section 364.285, Florida Statutes, we may impose a penalty or cancel a certificate if a company refuses to comply with our rules or any provision of Chapter 364, Florida Statutes. Section 364.183(1), Florida Statutes, states in pertinent part:

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.

As noted in the Case Background, we did not receive a response from Vortex by the required due dates for inclusion in the 2005 Local Competition Report. On December 23, 2005, our staff opened Docket No. 050963-TX to pursue compliance action against Vortex. After PAA Order No. PSC-06-0229-PAA-TX was issued in the docket, Vortex contacted this Commission concerning the matter. Vortex was able to provide proof that it had timely submitted its response via facsimile.

III. Decision:

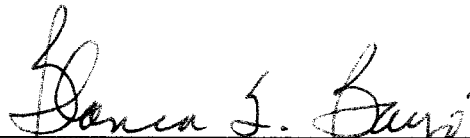
Therefore, we find it appropriate to vacate Order No. PSC-06-0229-PAA-TX, as it pertains to this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-06-0229-PAA-TX is hereby vacated, as it pertains to docket No. 050963. It is further

ORDERED that this docket is closed.

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

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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.