

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Benchmark Communications, LLC d/b/a Com One for apparent violation of Section 364.183(1), F.S., Access to Company Records.

DOCKET NO. 050965-TX
ORDER NO. PSC-06-0848-AS-TX
ISSUED: October 10, 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 ACCEPTING SETTLEMENT OFFER

BY THE COMMISSION:

I. Case Background:

On December 28, 2005, staff opened Docket No. 050965-TX against Benchmark Communications, LLC d/b/a Com One (Benchmark) 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 to Benchmark requesting data for inclusion in the Florida Public Service Commission's annual report to the Legislature on the status of local competition in Florida. Benchmark signed the return receipt card for each certified letter, but staff did not receive the company's response.

On March 20, 2006, this Commission issued Proposed Agency Action (PAA) Order No. PSC-06-0229-PAA-TX imposing a \$10,000 penalty on Benchmark for its apparent violation of Section 364.183(1), Florida Statutes.

On April 4, 2006, Benchmark submitted a request that this Commission vacate PAA Order No. PSC-06-0229-PAA-TX, or in the alternative, accept a settlement in the amount of \$500. At the June 6, 2006, Agenda Conference, this Commission rejected Benchmark's request to vacate the Order and rejected its alternative of a \$500 settlement payment. The matter was set for administrative hearing.

On September 6, 2006, Benchmark submitted an offer to resolve the issue in Docket No. 050965-TX.

DOCUMENT NUMBER-DATE

09367 OCT 10 06

FPSC-COMMISSION CLERK

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

II. Analysis:

On September 6, 2006, Mr. Benjamin Bronston, counsel for Benchmark, submitted an offer to settle the issue in this docket. In the letter, Mr. Bronston stated that Benchmark responded to the data request, but does not have adequate proof to support its claim. To settle the issue in this docket, Benchmark proposes the following:

- to voluntarily contribute a payment of \$3,500; and
- to retain a reputable outside compliance firm to handle its compliance matters so that this situation does not occur in the future.

We find that terms of the settlement agreement as summarized are fair and reasonable. Additionally, the amount of the settlement offer is consistent with this Commission's action in accepting similar terms of settlement for the same apparent violation in Docket No. 000217-TX, In Re: Initiation of show cause proceedings against ATI Telecom, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

III. Decision:

Therefore, we find it appropriate to accept Benchmark Communications, LLC d/b/a Com One's proposal to voluntarily contribute \$3,500 to resolve its apparent violation of Section 364.183(1), Florida Statutes. We find that docket shall be closed upon receipt of the \$3,500 contribution. The contribution, made payable to the Florida Public Service Commission, shall be received by November 10, 2006, and shall identify the docket number and company name. If the company fails to pay in accordance with the terms of this Order, Certificate No. 8568 shall be cancelled administratively. If the company's certificate is cancelled in accordance with this Order, it shall be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida. The contribution shall be forwarded to the Florida Department of Financial Services for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

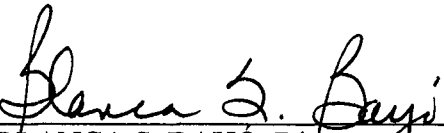
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Benchmark Communications, LLC d/b/a Com One's proposal to voluntarily contribute \$3,500 to resolve its apparent violation of Section 364.183(1), Florida Statutes, be accepted. It is further

ORDERED that this docket shall be closed upon receipt of the \$3,500 contribution. If the company fails to pay in accordance with the terms of this Order, Certificate No. 8568 shall be cancelled administratively. The contribution, made payable to the Florida Public Service Commission, shall be received by this Commission by November 10, 2006, and shall identify the docket number and company name. It is further

ORDERED that if the company's certificate is cancelled in accordance with this Order, it shall be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida. The contribution shall be forwarded to the Florida Department of Financial Services for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. It is further

By ORDER of the Florida Public Service Commission this 10th day of October, 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 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.