



Public Service Commission

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RECORDS AND REPORTING

DATE: MAY 25, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (VACCARO) *OV*
DIVISION OF TELECOMMUNICATIONS (M. WATTS) *WTA*

RE: DOCKET NO. 000215-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST SMART CITY NETWORKS FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

AGENDA: 06/06/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000215.RCM

CASE BACKGROUND

- March 13, 1999 - Smart City Networks (Smart City) obtained Florida Public Service Commission Alternative Local Exchange Company Certificate Number 5795.
- June 25, 1999 - Staff mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. Staff requested a response by August 6, 1999.
- July 6, 1999 - Smart City signed for and received the certified letter.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DATE: May 25, 2000

- December 6, 1999 - Staff sent a second certified letter requesting Smart City respond to the data request no later than December 22, 1999.
- February 22, 2000 - After receiving no response to its June 25, 1999 and December 6, 1999 certified letters, staff opened this docket to investigate whether Smart City should be required to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- April 10, 2000 - Commission Order No. PSC-00-0673-SC-TX was issued to show cause Smart City for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- May 1, 2000 - Smart City submitted a response to Commission Order No. PSC-00-0673-SC-TX.
- May 16, 2000 - Smart City submitted an offer to settle this case (Attachment A, page 5)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Smart City to resolve the apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records?

RECOMMENDATION: No. The Commission should not accept the company's settlement proposal. **(M. Watts)**

STAFF ANALYSIS: On May 1, 2000, Smart City submitted its response to the Order to Show Cause. Smart City's response to Commission Order No. PSC-00-0673-SC-TX admitted that it did not send the requested information, and provided that neither did it refuse to comply with nor willfully violate a rule or order of the Commission. Smart City maintains that it was simply negligent and therefore should not be fined or have its certificate canceled. On May 16, 2000, Smart City submitted a settlement offer that proposed the following:

- A monetary settlement of \$1,000

- To establish procedures for the receipt of information to preclude any further occurrences of this sort.

Smart City believes that the amount of the fine is disproportionate to the offense and that \$1,000, while still high, is more reasonable. However, staff believes that a settlement of \$1,000 is too low for the reasons outlined below:

- Two certified letters were sent to the company six months apart in an effort to obtain the information contained in company records for inclusion in the local competition report for the Legislature.
- It is imperative that the Commission receive 100% participation to accurately reflect the status of local telecommunication competition to the Legislature and the Governor.

Given that two attempts to obtain the information were made with strong language to emphasize the importance of the information to the Commission and the Legislature, staff believes that a higher settlement amount is warranted than in simple non-response cases. The Commission has accepted settlement offers of \$3,500 and \$4,000 from other Alternative Local Exchange Companies (ALECs) for the same offense, none of which reported any revenues for the preceding two years.

Historically, the Commission has not put many burdens on the ALEC industry in an effort to foster competition. For this reason, staff believes that the Commission should still expect compliance with the rules and statutes that are in place for ALECs. Therefore, staff recommends the Commission not accept Smart City's offer of settlement.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, this docket should remain open pending the resolution of the show cause proceeding. (Vaccaro)

DOCKET NO. 000215-1X

DATE: May 25, 2000

STAFF ANALYSIS: This docket should remain open pending the resolution of the show cause proceedings.

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May 15, 2000

Tim Vaccaro
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MAY 16 2000

In re: Docket No. 000215-TX- Show Cause Against Smart City Networks

Dear Mr. Vaccaro:

On May 1, 2000, I responded to Show Cause Order No. PSC-00-0673-SC-TX, on behalf of Smart City Networks. Even though Smart City Networks does not believe that the company refused to comply with or willfully violated Section 364.183(1), Florida Statutes, or any rule or order of the Commission, Smart City Networks is willing to offer a settlement to resolve this docket.

Smart City Networks offers to pay the lump sum of \$1,000.00 and to establish procedures for the receipt of information to preclude any further occurrences of the sort objected to in the Show Cause Order issued against the company.

Smart City Networks submits that there is no justification to fine the company more than the amount offered in settlement. Anything more would be disproportionate to the offense alleged, particularly in view of the fact that Smart City Networks has not yet engaged in business in Florida, has earned no revenue from the conduct of operations in the state and is now aware of the serious nature of not responding to data requests.

It is my understanding that this offer will be taken to the Commission at a regularly scheduled Agenda Conference.

Sincerely,



David B. Erwin

cc: Gordon Mills