

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: FEBRUARY 8, 2001

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING, L. FORDHAM, ^{c. 27}
CHRISTENSEN, ELLIOTT) *DAE*
DIVISION OF COMPETITIVE SERVICES (K. CRAIG) *[Signature]*

RE: INITIATION OF SHOW CAUSE PROCEEDINGS BY FLORIDA PUBLIC SERVICE COMMISSION FOR APPARENT VIOLATION OF SECTION 364.183 (1), F.S., ACCESS TO COMPANY RECORDS.

DOCKET NO. 010126-TX - WIRELESS ONE NETWORK, L.P. D/B/A CELLULAR ONE OF SOUTHWEST FLORIDA
DOCKET NO. 010127-TX - CFT INC.
DOCKET NO. 010128-TX - CITY OF OCALA
DOCKET NO. 010129-TX - BROWARD BUSINESS SERVICE, INC. D/B/A FESTIVAL TELEPHONE SERVICES, INC. AND D/B/A COMMUNICATION SERVICE CENTERS
DOCKET NO. 010130-TX - HAYES TELECOMMUNICATIONS SERVICES, INC.
DOCKET NO. 010131-TX - GOLDEN HARBOR OF FLORIDA, INC. D/B/A HOMETOWN TELEPHONE OF FLORIDA, INC.
DOCKET NO. 010132-TX - INTERNATIONAL TELCOM, LTD.
DOCKET NO. 010133-TX - CRG INTERNATIONAL, INC. D/B/A NETWORK ONE

AGENDA: 02/20/01 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010126.RCM

DOCUMENT NUMBER-DATE

01831 FEB-80

FPSC-RECORDS/REPORTING

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CASE BACKGROUND

- July 6, 2000 - Each of the certificated Alternative Local Exchange Company (ALEC) providers listed on page 8 was mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes.
- July 7-11, 2000 - The certified letter return receipts (Attachment A, pages 9-12) from the July 6, 2000, mailings were signed by each of the companies listed on page 8.
- January 22, 2001 - None of the companies listed on page 8 have responded to Commission staff.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.386, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order each of the companies listed on page 8 to show cause why it should not be fined \$10,000 or its respective certificate, as listed on page 8, should not be canceled for apparent failure to provide the Commission access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records?

RECOMMENDATION: Yes. The Commission should order each of the companies listed on page 8 to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 or have its respective certificate, as listed on page 8, canceled for apparent failure to provide the Commission access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records. Each company's response should contain specific allegations of fact and law. If any of the companies listed on page 8 fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and the company's respective certificate, as listed on page 8, should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (K. Craig)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Section 364.183(1), Florida Statutes, Access to Company Records, states in part:

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

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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.

Based on the certified letter return receipts (Attachment A, pages 9-12) staff received from the United States Postal Service, it appears that the companies listed on page 8 received the data request and could have responded. It is imperative that the Commission receive 100% participation to accurately reflect the status of local telecommunication competition to the Legislature and the Governor. Staff requested the information in order to comply with Section 364.386, Florida Statutes, Reports to the Legislature. Section 364.386, Florida Statutes, Reports to the Legislature, 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.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a

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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 rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t 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).

Staff believes that the conduct of each of the companies listed on page 8, by refusing to allow staff access to company records, in apparent violation of Section 364.183(1), Florida Statutes, 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, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, 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 the companies listed on page 8 at issue here, would meet the standard for a "willful violation."

The companies listed on page 8 did not respond to the Commission's request for information. All have been certificated in Florida since at least 1997. None of the companies have reported any revenues and are apparently not providing telecommunications services in Florida. Nevertheless, they are still subject to the Commission's rules and Florida Statutes governing Alternative Local Exchange Companies (ALECs). The fine amount recommended is consistent with amounts used for recent, similar violations.

Therefore, staff recommends that the Commission should order each of the companies listed on page 8 to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 or have its respective certificate, as listed on page 8, canceled for failure to provide the Commission access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records. Each company's response should contain specific allegations of fact and law. If any of the companies listed on page 8 fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is

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not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and the company's respective certificate, as listed on page 8, should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

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ISSUE 2: Should these dockets be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved and each of the companies listed on page 8 timely responds to its respective show cause order, its respective docket should remain open pending the resolution of the show cause proceedings.

Staff recommends that if any of the companies listed on page 8 fails to respond to the Order to Show Cause within the 21-day show cause response period and the respective fine is not received within ten business days after the expiration of the show cause response period, the company's respective certificate, as listed on page 8, should be canceled and its respective docket may be closed administratively. If any of the companies listed on page 8 pays the fine recommended in Issue 1, the company's respective docket should be closed. A protest in one docket should not prevent the action in a separate docket from becoming final. **(B. Keating, L. Fordham, Christensen, Elliott)**

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved and each of the companies listed on page 8 timely responds to its respective show cause order, its respective docket should remain open pending the resolution of the show cause proceedings.

Staff recommends that if any of the companies listed on page 8 fails to respond to the Order to Show Cause within the 21-day show cause response period and the respective fine is not received within ten business days after the expiration of the show cause response period, the company's respective certificate, as listed on page 8, should be canceled and its respective docket may be closed administratively. If each of the companies listed on page 8 pays the fine recommended in Issue 1, the company's respective docket should be closed. A protest in one docket should not prevent the action in a separate docket from becoming final.

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DOCKET NO.	PROVIDER	CERTIFICATION DATE	CERTIFICATE NO.
010126-TX	Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida	07/25/97	5181
010127-TX	CFT INC.	12/11/96	4748
010128-TX	City of Ocala	05/13/97	4865
010129-TX	Broward Business Service, Inc. d/b/a Festival Telephone Services, Inc. and d/b/a Communication Service Centers	12/11/96	4752
010130-TX	Hayes Telecommunications Services, Inc.	06/21/95	4032
010131-TX	Golden Harbor of Florida, Inc. d/b/a Hometown Telephone of Florida, Inc.	09/04/97	5211
010132-TX	International Telcom, Ltd.	12/17/97	5531
010133-TX	CRG International, Inc. d/b/a Network One	11/22/97	4847

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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
1. Article Addressed to:	7-11	
Cellular One of Southwest Florida 2100 Electronics Lane Ft. Myers, FL 33912-1605	C. Signature <i>[Signature]</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
	D. Is delivery address different from item 1?	<input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:
	3. Service Type	
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Copy from service label)		
7099 3400 0004 3010 1490		
PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789		

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
1. Article Addressed to:	7/10/00	
CFT INC. 13938 West Hillsborough Avenue Tampa, FL 33635-9656	C. Signature <i>[Signature]</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
	D. Is delivery address different from item 1?	<input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:
	3. Service Type	
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7099 3400 0000 1419 5259		
PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789		

DATE: FEBRUARY 8, 2001

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 7-10-00
1. Article Addressed to: City of Ocala P. O. Box 1270 Ocala, FL 34470-1270	C. Signature X <i>Kenneth Davis</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
2. Article Number (Copy from service label) 7099 3400 0000 1419 5105	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, July 1999	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
Domestic Return Receipt 102596-99-M-1789		

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 7-10-00
1. Article Addressed to: Communication Service Centers 777 South State Road 7 Margate, FL 33068-2823	C. Signature X <i>[Signature]</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
2. Article Number (Copy from service label) 7099 3400 0000 1419 5525	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, July 1999	3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
Domestic Return Receipt 102596-99-M-1789		

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<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
	C. Signature	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Mr. Danny Hayes Hayes Telecommunications Services, Inc. % ProxyMed, Inc./Hayes Computer System 1355 Thomaswood Drive Tallahassee, FL 32312-2915	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Copy from service label)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7099 3410 0004 3008 7138		
PS Form 3811, July 1999		102595-99-M-1789

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
	C. Signature	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Hometown Telephone of Florida, Inc. 401 Carlson Circle San Marcos, TX 78666-6730	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Copy from service label)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7099 3400 0004 3008 7312		
PS Form 3811, July 1999		102595-99-M-1789

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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. 	<p>A. Received by (Please Print Clearly) <u>Lamont King</u> B. Date of Delivery <u>1/10/00</u></p> <p>C. Signature <u>Lamont King</u> <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>
<p>1. Article Addressed to:</p> <p>Mr. Mike K. Tyler International Telecom, Ltd. 417 2nd Avenue, West Seattle, WA 98119-4012</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Copy from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

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. 	<p>A. Received by (Please Print Clearly) <u>T Smith</u> B. Date of Delivery <u>1/10/00</u></p> <p>C. Signature <u>T Smith</u> <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>
<p>1. Article Addressed to:</p> <p>Network One 2000 Riveredge Parkway, Suite 900 Atlanta, GA 30328-4618</p>	<p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>7099 3400 0000 1419 <u>4474</u></p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789