



# Public Service Commission

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FPSC-RECORDS AND REPORTING

**DATE:** MARCH 22, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (VACCARO) *W BK*  
DIVISION OF COMPETITIVE SERVICES (M. WATTS) *MA*

**RE:** DOCKET NO. 010125-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ATLANTIC.NET BROADBAND, INC. FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

**AGENDA:** 04/03/01 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\010125AS.RCM

**CASE BACKGROUND**

- April 17, 1999 - Atlantic.Net Broadband, Inc. (Atlantic.Net) obtained Florida Public Service Commission Alternative Local Exchange Company (ALEC) Certificate Number 6070.
- February 22, 2000 - Staff opened Docket No. 000239-TX to initiate show cause proceedings against Atlantic.Net for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records for failure to provide staff with information contained in company records necessary for inclusion in the 1999 local competition report to the Legislature.
- March 16, 2000 - Staff filed a recommendation to order Atlantic.Net to show cause in writing why it should not be fined \$10,000 or have its ALEC certificate canceled for

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apparent violation of Section 364.183(1), Florida Statutes, for presentation at the March 28, 2000, Agenda Conference.

- April 10, 2000 - The Commission issued Order No. PSC-00-0669-SC-TX, in Docket No. 000239-TX, requiring Atlantic.Net to show cause why it should not be fined \$10,000 or have its ALEC certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- May 23, 2000 - The Commission issued Order No. PSC-00-1024-AS-TX approving a \$3,500 settlement offer submitted by Atlantic.Net in Docket No. 000239-TX.
- June 6, 2000 - The Commission received Atlantic.Net's check for \$3,500 to settle Docket No. 000239-TX.
- July 6, 2000 - Atlantic.Net was mailed a certified letter requesting information contained in company records for inclusion in the 2000 local competition report to the Legislature.
- July 10, 2000 - Atlantic.Net signed the return receipt from the July 6, 2000, certified letter.
- January 30, 2001 - Staff did not receive the information requested in the July 6, 2000, mailing, therefore staff opened this docket to initiate show cause proceedings against Atlantic.Net for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records for failure to provide staff with information contained in company records necessary for inclusion in the 2000 local competition report to the Legislature. This docket was scheduled to be presented to the Commission at the February 20, 2001, Agenda Conference.
- February 20, 2001 - This docket was deferred from the Agenda Conference pending a settlement offer from the company.
- March 6, 2001 - Atlantic.Net submitted an offer of settlement (Attachment A, pages 6-7).

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

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept the settlement offer proposed by Atlantic.Net Broadband, Inc. to resolve the apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records?

**RECOMMENDATION:** Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 6070 should be canceled administratively. The company has waived any objections to the administrative cancellation of certificate number 6070 in the event its offer is approved by the Commission and it fails to comply with the terms of its settlement offer. **(M. Watts)**

**STAFF ANALYSIS:** Staff sent a certified letter requesting information contained in company records to Atlantic.Net on July 6, 2000, and requested a written response by August 11, 2000. Staff did not receive the requested information from Atlantic.Net in apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. Therefore, on January 30, 2001, staff opened this docket to require Atlantic.Net to show cause why it should not be fined or have certificate number 6070 canceled, pursuant to Section 364.285, Florida Statutes.

On March 6, 2001, staff received Atlantic.Net's settlement offer (Attachment A, pages 6-7). In its settlement offer, Atlantic.Net explained that it did respond to staff's questionnaire, but since it cannot offer proof, it proposed the following:

- A monetary settlement of \$7,000;
- To institute a new filing system wherein all communiques from the Commission will be date stamped and prioritized;
- To dispatch all documents to the Florida Public Service Commission via certified mail or other delivery methods which provide a record of the date sent and received;

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- To maintain a collection of the relevant portions of the Florida Administrative Code; and
- To appoint qualified personnel to work closely with Commission staff to ensure that all documents submitted to the Florida Public Service Commission are complete and appropriate.

In the settlement offer for the previous show cause action against Atlantic.Net (Docket No. 000239-TX), the company stated that it had experienced some start-up staffing problems that resulted in its failure to provide the data requested for inclusion in the 1999 local competition report to the Legislature. To correct this, it stated it would give incoming mail from the Florida Public Service Commission the highest priority and institute procedures to ensure it did not happen again.

The company maintains that for the 2000 local competition report to the Legislature, it did provide the requested data. However, it sent it through the United States Postal Service via regular mail and, therefore, has no proof to support its claim. In outlining the changes it will make to better meet its regulatory obligations in its offer to settle this docket, Atlantic.Net has demonstrated a significant improvement in organization, understanding and commitment to regulatory matters.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support Atlantic.Net's offer of settlement. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 6070 should be canceled administratively. The company has waived any objections to the administrative cancellation of certificate number 6070 in the event its offer is approved by the Commission and it fails to comply with the terms of its settlement offer.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$7,000 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 6070 should be canceled administratively, and this docket should be closed. **(Vaccaro)**

**STAFF ANALYSIS:** This docket should remain open pending the remittance of the \$7,000 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, certificate number 6070 should be canceled administratively, and this docket should be closed.



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Blanca Bayo, Director  
Records and Reporting  
2540 Shumard Oak Blvd  
Tallahassee, FL 32599

Re.: Settlement offer for **Docket No. 010125-TX**

March 1, 2001

Dear Madam:

Atlantic.Net Broadband has become aware that a Show Cause proceeding has been initiated against Atlantic.Net Broadband for an apparent violation of Section 364.183 (1), F.S., *Access to Company Records*.

The record shows that on July 6, 2000 Atlantic.Net was mailed a certified letter requesting information contained in company records for inclusion in the 2000 local competition report to the Legislature.

This marks the second time that Atlantic.Net Broadband has not complied in a timely manner to a request for information. On February 22, 2000 the Commission opened Docket No. 000239-TX to initiate a Show Cause proceeding for Atlantic.Net Broadband's violation of Section 364.183(1) F.S., *Access to Company Records*. The PSC Staff recommended a fine of \$10,000 or cancellation of Atlantic.Net Broadband's ALEC certificate. The Commission later approved a settlement offer by Atlantic.Net Broadband for \$3,500.

Kevin Hayes, the contact person at Atlantic.Net Broadband, has submitted a form which he claims is the response the Questionnaire sent in July of 2000. Mr. Hayes states that he mailed the response to the Commission on Aug 3, 2000. At this time he has not been able to provide evidence that it was actually received by the Commission. Mr. Hayes' response is enclosed with this letter. Because Mr. Hayes has no evidence that the Commission received his response, Atlantic.Net Broadband is prepared to make an offer for settlement of this incident.

*At this time, Atlantic.Net Broadband would like to propose a settlement offer of \$7,000.*

To ensure that no further non-compliance or delayed responses occur in the future, Atlantic.Net Broadband has appointed Jacques Ward to oversee the collection and dissemination of ALEC records including filing requirements. Jacques is a recent

graduate of the University of Florida's College of Law and has demonstrated an excellent ability to coordinate and organize our company records. Thus far, Jacques has made great strides in organizing our provisioning services and helping to prepare documents. I am sure that he will prove to be an invaluable part of the Atlantic.Net Broadband team.

To ensure future compliance in a timely manner with Commission requirements and requests, Atlantic.Net Broadband has instituted a new filing system wherein all communiqués from the Commission will be date-stamped and prioritized. In addition the following instituted the following procedures:

- all documents submitted to the Commission will be dispatched using certified mail and other delivery methods, which provide a record of the date sent and the date the mail is received and accepted.
- Atlantic.Net Broadband will maintain a collection of the relevant portions of the Florida Administrative Code, including the sections related to The Public Service Commission, Telephone Companies and Alternative Local Exchange Companies.
- Jacques will work closely with members of the Commission Staff to ensure that the documents submitted by Atlantic.Net Broadband are complete and appropriate. At this time, Jacques is working closely with Melinda Watts of the PSC office to ensure that Atlantic.Net Broadband is following the correct procedure to resolve all possible conflicts and/or violations.

Towards the end of complying with relevant portions of the Florida Administrative Code concerning Records and Reporting requirements, Atlantic.net would like to announce in advance that Jacques Ward, our Documents Handler will be wholly responsible for Commission contacts after March 15, 2001—He is currently assisting Kevin Hayes, our contact for the Public Service Commission. Atlantic.Net Broadband will file a separate update with the Commission within ten days of the change date (March 15, 2001).

Atlantic.Net Broadband waives any objections to the administrative cancellation of its certificate in the event this offer is accepted and Atlantic.Net Broadband fails to comply with the terms of this offer.

Sincerely,



Manoj Puranik  
President  
Atlantic.net Broadband, Inc.