

**ORIGINAL**

**Matilda Sanders**

**From:** Becky Heggelund [bheggelund@nbglaw.com]  
**Sent:** Monday, April 03, 2006 5:31 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Ben Bronston  
**Subject:** Docket 050965-TX, Compliance Investigation of Benchmark Communications, LLC d/b/a Com One  
**Attachments:** \_0403162212\_001.pdf

RE: Docket 050965-TX, 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

Total Pages Filed (2)

Description of filing: Letter in response to investigation of Benchmark Communications, LLC d/b/a Com One

Becky Heggelund for Benjamin W. Bronston, Esq.  
 Nowalsky, Bronston & Gothard, APLLC  
 3500 N. Causeway Blvd. #1442  
 Metairie, Louisiana 70002  
 (504) 832-1984 FAX (504) 831-0892

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NOWALSKY, BRONSTON & GOTHARD

A Professional Limited Liability Company  
Attorneys at Law

Leon L. Nowalsky  
Benjamin W. Bronston  
Edward P. Gothard

3500 North Causeway Boulevard  
Suite 1442  
Metairie, Louisiana 70002  
Telephone: (504) 832-1984  
Facsimile: (504) 831-0892

Monica Borne Haab  
Philip R. Adams, Jr.

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Of Counsel  
Bruce C. Betzer

April 3, 2006

Blanca Bayo, Director  
Division of the Commission Clerk & Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

RE: 050965-TX, 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

Dear Director Bayo:

I am writing on behalf of my client, Benchmark Communications, LLC d/b/a Com One ("Benchmark") with regard to the above matter. Benchmark realizes the serious nature of the violations alleged by the Commission. However, Benchmark respectfully submits the following in connection with this action:

**1. Responsive Documents Were Timely Filed.**

- a. Mr. Mark Guidry, Manager and CEO of Benchmark, sent the requested information on July 11, 2005 via regular mail as is Benchmark's customary means of filing documents of this sort. As a result, Benchmark does not have a FedEx receipt, US Post Office receipt or phone bill for fax. Benchmark can provide the Commission with a receipt indicating the postage paid for and inserted into Benchmark's postage meter. Mr. Guidry is also ready, willing and able to sign an affidavit of mailing if necessary.
- b. As to the second notice, we assume that Mr. Guidry's July 11, 2005 filing simply crossed in the mail with the second notice. Since Mr. Guidry had already submitted Benchmark's response, he felt, in good faith, that there was no need to further investigate.

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2. **Extraordinary Circumstances Should Excuse Benchmark From Paying.**

- a. Benchmark, which is based in New Orleans, operates in an area of the Country which was hardest hit by the past two (2) unusually harsh hurricane seasons. Specifically, Benchmark provides local and long distance telecommunications services to residential customers in apartments along the Gulf Coast, including Slidell (LA), Gulfport (MS), Biloxi (MS), Mobile (AL) and Pensacola (FL). As a result of these storms (including Ivan and Katrina), Benchmark has incurred significant monetary damages which are not covered by applicable insurance.
- b. Moreover, Benchmark has actually provided a very valuable public service by offering either free or deeply discounted services to various customers in the areas affected by these storms who could not otherwise afford those services, thereby enabling them to stay in communication with family, insurance adjusters and other important contacts.

3. **Benchmark Cannot Afford To Pay The \$10,000 Fine.**

Since its inception, Benchmark has been operating at a significant cash burn rate and cannot afford to pay the Commission any substantial amount of fine or penalty.

In conclusion, Benchmark voluntarily submits that it should not be fined at all since its CEO, Mr. Mark Guidry, timely submitted the materials in question. To repeat, Mr. Guidry would be willing to sign an affidavit to that effect. In the event the Commission deems this proof to be insufficient, then we submit that Benchmark should nonetheless be excused from paying the subject fine due to the extraordinary community service that it performed during a time of crisis as Katrina left thousands without vital communications. Finally, in the event the Commission maintains its stated intention of fining Benchmark, we submit that a fine of \$10,000 is grossly unjustified; rather, we submit that a fine in the amount of \$500 in full settlement and compromise of the captioned proceeding would be more appropriate given the circumstances and Benchmark's operating deficit.

Respectfully submitted,

*s/Benjamin W. Bronston*

Benjamin W. Bronston

BWB/bb  
Enclosures