

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-06-0534-FOF-TX ISSUED: June 26, 2006
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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

ORDER DENYING SETTLEMENT PROPOSAL AND REQUEST TO VACATE ORDER
AND SETTING MATTER FOR ADMINISTRATIVE HEARING

BY THE COMMISSION:

I. Case Background

On December 27, 2005, our 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, our staff sent certified letters via the United States Postal Service (U.S.P.S.) to Benchmark requesting data contained in its company records for inclusion in our annual report to the Legislature on the status of local competition in Florida (local competition report). Benchmark signed the return receipt card for each certified letter, but our staff did not receive the company's response.

Our staff's recommendation in Docket No. 050965-TX was presented to this Commission at the February 28, 2006, Agenda Conference. On March 20, 2006, Proposed Agency Action (PAA) Order No. PSC-06-0229-PAA-TX was issued by this Commission imposing a \$10,000 penalty on Benchmark for its apparent violation of Section 364.183(1), Florida Statutes.

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

II. Analysis

On April 4, 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 on July 11, 2005, via regular mail. Upon receiving our staff's July 19, 2005, letter, Benchmark assumed its response had not arrived at this Commission before this Commission's

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reminder letter went out. Benchmark does not have a carrier receipt to support its claim, but can provide a receipt from its postage meter indicating postage paid and inserted into Benchmark's postage meter, along with an affidavit of mailing signed by Benchmark's president if necessary.

Benchmark also believes that this Commission should take the following information into account in making its decision. Benchmark, which is based in New Orleans, operates in many areas hardest hit by tropical weather in the 2004 and 2005, particularly Hurricanes Ivan and Katrina. Hence, it has sustained significant monetary damages not covered by applicable insurance. Also, Benchmark provided a public service to its customers in the aftermath of the storms by providing free or deeply discounted service to enable them to maintain communications with family, insurance adjusters and disaster relief agencies. For this reason, Benchmark cannot afford to pay any substantial penalty or settlement.

In the event this Commission deems the proof it has offered to be insufficient, Benchmark proposed a monetary offer of \$500.

We find that the terms of the settlement agreement as summarized are not acceptable. Benchmark believes that a settlement offer of \$3,500 is too high given the monetary losses it has suffered due to the 2004 and 2005 hurricane seasons. However, the company signed two return receipts for correspondence sent more than one month apart from this Commission that clearly outlined the possible penalty for failure to comply, provided multiple means for submission of the required data, and urged the companies to contact this Commission to confirm receipt of its data to preclude this situation. A settlement offer of \$3,500 is consistent with this Commission's action in accepting similar terms of settlement for the first instance of the same violation in previous dockets (see Attachment A for a list). Thus, Benchmark's proposal of \$500 is not consistent with this Commission's actions with other CLECs.

III. Decision

Therefore, we find it appropriate not to accept Benchmark Communications, LLC d/b/a Com One's proposal that we vacate Proposed Agency Action Order No. PSC-06-0229-PAA-TX as it pertains to Benchmark Communications, LLC only, nor in the alternative its settlement offer to voluntarily contribute \$500 to this Commission for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), Florida Statutes.

This matter shall be set for an administrative hearing and the docket shall remain open pending further action.

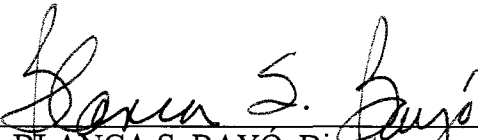
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Benchmark Communications, LLC d/b/a Com One's proposal that we vacate Proposed Agency Action Order No. PSC-06-0229-PAA-TX as it pertains to Benchmark Communications, LLC only, and its settlement offer to voluntarily contribute \$500 to this Commission for deposit in the General Revenue Fund

within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), Florida Statutes, be denied. It is further

ORDERED that this matter shall be set for an administrative hearing and the docket shall remain open pending further action.

By ORDER of the Florida Public Service Commission this 26th day of June, 2006.


BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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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.