

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: April 20, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (M. Watts, Howell, Ollila)
Office of the General Counsel (Tan, Wiggins)

RE: Docket No. 050963-TX – Compliance investigation of Vortex Broadband Communications, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

AGENDA: 05/02/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050963.RCM.DOC

Case Background

Section 364.386, Florida Statutes, requires the Florida Public Service Commission (the Commission) to submit a report to the Legislature on December 1st of each year on the status of local competition in the telecommunications industry. To obtain the data required to compile this report (hereinafter referred to as the “local competition report”) each year, staff mails data requests via United States Postal Service (U.S.P.S.) Certified Mail to all certificated incumbent and competitive local exchange telecommunications companies (ILECs and CLECs) in Florida in early June, with a response date due in mid-July. For the companies that do not respond by the due date, staff sends a second letter via U.S.P.S. Certified Mail with a due date in the first week of August. Since there are several hundred active CLEC certificates each year (over 400 as

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of the date of this filing), staff strongly encourages all companies to file these responses by the first week in August to be able to compile the report in a timely manner.

On June 3, 2005, staff mailed the initial data request to Vortex Broadband Communications, Inc. (Vortex) with a due date of July 15, 2005. Staff did not receive Vortex's response by the due date. On July 19, 2005, staff sent a second letter to Vortex with a due date of August 1, 2005. Again, staff did not receive a response from Vortex by the due date. Both the June 3, 2005, and July 19, 2005, letters referenced Section 364.285(1), Florida Statutes, and notified the recipient of the possible consequences of failure to provide the requested information.

On February 28, 2006, the Commission approved staff's recommendation in Docket No. 050963-TX to impose a penalty of \$10,000 on Vortex for apparent violation of Section 364.183(1), Florida Statutes, and on March 20, 2006, issued Proposed Agency Action (PAA) Order No. PSC-06-0229-PAA-TX to impose the penalty.

On March 23, 2006, Vortex provided staff call detail records indicating that the company sent its data request response to facsimile (850) 413-6403 on June 10, 2005. Telephone number (850) 413-6403 is one of three Commission facsimile numbers given to companies in staff's June 3, 2005, and July 19, 2005, data requests.

Discussion of Issues

Issue 1: Should the Commission vacate Order PSC-06-0229-PAA-TX in regard to the compliance investigation of Vortex Broadband Communications, Inc. for apparent violation of Section 364.183(1), Florida Statutes?

Recommendation: Yes, the Commission should vacate PAA Order No. PSC-06-0229-PAA-TX, issued on March 20, 2006. **(M. Watts/Howell/Ollila/Wiggins/Tan)**

Staff Analysis: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty or cancel a certificate if a company refuses to comply with the Commission rules or any provision of Chapter 364, Florida Statutes. Section 364.183(1), Florida Statutes, states in pertinent part:

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 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.

As noted in the Case Background, staff did not receive a response from Vortex by the required due dates for inclusion in the 2005 Local Competition Report. On December 23, 2005, staff opened Docket No. 050963-TX to pursue compliance action against Vortex. After PAA Order No. PSC-06-0229-PAA-TX was issued in the docket, Vortex contacted staff concerning the matter. Vortex was able to provide proof that it had timely submitted its response via facsimile. Therefore, staff believes that the Commission should vacate Order No. PSC-06-0229-PAA-TX, as it pertains to this docket.

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Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed upon the issuance of the Commission's vacating order. The vacating order should specify that PAA Order No. PSC-06-0229-PAA-TX should only be vacated with respect to Docket No. 050963-TX. **(Wiggins/Tan)**

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed as there are no other issues that need to be addressed by the Commission.