

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: 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)

RE: Docket No. 060061-TX – Compliance investigation of T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone for apparent violation of Section 364.183(1), F.S., Access to Company Records.

AGENDA: 05/02/06 – Regular Agenda – Proposed Agency Action – 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\060061S.RCM.DOC

Case Background

On January 24, 2006, staff opened Docket No. 060061-TX against T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone (T3) for its apparent violation of Section 364.183(1), F.S., Access to Company Records. On June 3 and July 19, 2005, staff sent certified letters via the United States Postal Service (U.S.P.S.) to T3 requesting data contained in its company records for inclusion in the Florida Public Service Commission's (Commission's) annual report to the Legislature on the status of local competition in Florida (local competition report). T3 signed the return receipt card for the first certified letter, but staff did not receive the company's response.

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Staff's recommendation in Docket No. 060061-TX to investigate T3's apparent violation of Section 364.183(1), Florida Statutes, was scheduled to be presented at the April 4, 2006, Agenda Conference. However, on March 9, 2006, T3 submitted a proposal to settle the issue in the docket. This recommendation addresses T3's proposed settlement.

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.

Discussion of Issues

Issue 1: Should the Commission accept T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone's settlement offer to voluntarily contribute \$1,500 to the 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?

Recommendation: Yes, the Commission should accept the company's settlement proposal.
(M. Watts/Howell/Ollila/Tan)

Staff Analysis: On March 9, 2006, T3 submitted an offer to settle the issue in this docket. In its letter, T3 stated that when it received the first request, the company was experiencing both personnel changes and corruption of its electronic filing system that contributed to the company's oversight in responding to the data request. However, it did not receive the second request. Staff's July 19, 2006, certified letter was returned by the U.S.P.S. as "unclaimed." T3 stated it is baffled by this because it occupied the same premises throughout this period. Given the circumstance that it never received the second letter, T3 proposed the following:

- A monetary offer of \$1,500.00; and
- To establish internal procedures to add the local competition report to its scheduling program and implement an "old-fashioned tickler file" as a backup to avoid a situation of this nature arising in the future.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable. Staff has consistently recommended that the Commission not accept less than \$3,500 to settle a first violation in these dockets. However, in Docket No. 000215-TX, In Re: Initiation of show cause proceedings against Smart City Networks for apparent violation of Section 364.183(1), F.S., Access to Company Records, the Commission voted to accept the company's offer of \$1,000 on the basis that staff did not receive the second return receipt and, thus, had no proof that the company had received the second request. The circumstances in T3's case are similar to those of the company in Docket No. 000215-TX. Therefore, staff recommends that the Commission accept T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone's settlement offer to voluntarily contribute \$1,500 to the 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.

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Issue 2: Should this docket be closed?

Recommendation: If no person, whose substantial interests are affected by the proposed actions files a protest of the Commission's decision on Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of a Consummating Order. If the Commission's Order is not protested and T3 complies with its settlement offer, this docket should be closed administratively. If T3 fails to remit the voluntary contribution of \$1,500 to the Commission within 30 days of the issuance of the Consummating Order, Certificate No. 8238 should be canceled and this docket should be closed administratively. **(Tan)**

Staff Analysis: Staff recommends that the Commission take actions as set forth in the above staff recommendation.