

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: September 21, 2006

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

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

RE: Docket No. 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.

AGENDA: 10/03/06 – 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\050965AS.RCM.DOC

Case Background

On December 28, 2005, 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, staff sent certified letters to Benchmark requesting data for inclusion in the Florida Public Service Commission's annual report to the Legislature on the status of local competition in Florida. Benchmark signed the return receipt card for each certified letter, but staff did not receive the company's response.

On March 20, 2006, the Commission issued Proposed Agency Action (PAA) Order No. PSC-06-0229-PAA-TX imposing a \$10,000 penalty on Benchmark for its apparent violation of Section 364.183(1), Florida Statutes.

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On April 4, 2006, Benchmark submitted a request that the Commission vacate PAA Order No. PSC-06-0229-PAA-TX, or in the alternative, accept a settlement in the amount of \$500. At the June 6, 2006, Agenda Conference, the Commission rejected Benchmark's request to vacate the Order and rejected its alternative of a \$500 settlement payment. The matter was set for administrative hearing.

On September 6, 2006, Benchmark submitted an offer to resolve the issue in Docket No. 050965-TX. This recommendation addresses Benchmark'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 Benchmark Communications, LLC d/b/a Com One's proposal to voluntarily contribute \$3,500 to the Commission to resolve its apparent violation of Section 364.183(1), Florida Statutes?

Recommendation: Yes. The Commission should accept the company's settlement offer. **(M. Watts/Tan)**

Staff Analysis: On September 6, 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, but does not have adequate proof to support its claim. To settle the issue in this docket, Benchmark proposes the following:

- to voluntarily contribute a payment of \$3,500; and
- to retain a reputable outside compliance firm to handle its compliance matters so that this situation does not occur in the future.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable. Additionally, the amount of the settlement offer is consistent with the Commission's action in accepting similar terms of settlement for the same apparent violation in Docket No. 000217-TX, In Re: Initiation of show cause proceedings against ATI Telecom, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

Therefore, staff recommends that the Commission accept Benchmark Communications, LLC d/b/a Com One's proposal to voluntarily contribute \$3,500 to the Commission 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 the Commission approves staff's recommendation on Issue 1, the docket should be closed administratively upon receipt of the \$3,500 contribution. The contribution, made payable to the Florida Public Service Commission, should be received by the Commission by November 10, 2006, and should identify the docket number and company name. The Commission should forward the contribution to the Florida Department of Financial Services for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission's Order, Certificate No. 8568 should be cancelled administratively. If the company's certificate is cancelled in accordance with the Commission's Order from this recommendation, it should be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida. **(Tan)**

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