

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: October 12, 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, West)

RE: Docket No. 050948-TX – Compliance investigation of Arrow Communications, Inc. d/b/a ACI for apparent violation of Section 364.183(1), F.S., Access to Company Records.

AGENDA: 10/24/06 – 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\050948PWD.RCM.DOC

Case Background

On December 27, 2005, staff opened Docket No. 050948-TX against Arrow Communications, Inc. d/b/a ACI (ACI) for its apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. On June 3 and July 19, 2005, staff sent certified letters to ACI requesting data contained in its company records for inclusion in the Florida Public Service Commission's annual report to the Legislature on the status of local competition in Florida. ACI's personnel signed the return receipt card for each certified letter, but staff did not receive the company's response.

Docket No. 050948-TX was scheduled to be heard at the February 28, 2006, Agenda Conference. However, on February 23, 2006, ACI submitted a request to defer the docket from

the scheduled Agenda Conference pending settlement negotiations with staff. ACI's request was approved.

On May 2, 2006, staff brought a recommendation before the Commission to address ACI's proposed settlement. The Commission denied ACI's proposed settlement and on May 22, 2006, issued Proposed Agency Action (PAA) Order 06-0440-PAA-TX, penalizing the company \$10,000 for its apparent violation of Section 364.183(1), Florida Statutes.

On June 6, 2006, ACI filed a petition protesting the PAA Order issued on May 22, 2006. An informal meeting was held between staff and the company's counsel on August 23, 2006. On September 1, 2006, ACI filed a letter advising of withdrawal of its petition protesting PAA Order 06-0440-PAA-TX and acknowledged that Certificate No. 4468 shall be canceled per the Order.

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 acknowledge Arrow Communications, Inc d/b/a ACI's withdrawal of its Petition of PAA Order No. PSC-06-0440-PAA-TX and Request for Formal Proceeding (Protest)?

Recommendation: Yes. Staff recommends that the Commission acknowledge Arrow Communications, Inc d/b/a ACI's withdrawal. Staff also recommends that PAA Order No. PSC-06-0440-PAA-TX be rendered final and effective and that Certificate No. 4468 be canceled per the Commission's May 22, 2006, Order. **(Tan, West, M. Watts)**

Staff Analysis: As ACI has filed a withdrawal of its Protest, staff recommends that the Commission acknowledge ACI's withdrawal of its Protest. Staff also recommends that PAA Order No. PSC-06-0440-PAA-TX be rendered final and effective and that Certificate No. 4468 be canceled per the Commission's May 22, 2006, Order.

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Issue 2: Should this Docket be closed?

Recommendation: Yes, staff believes that this Docket should be closed and competitive local exchange telecommunications company (CLEC) Certificate No. 4468 should be canceled upon issuance of the Final Order. The company should be required to immediately cease and desist providing CLEC services in Florida. Staff shall send the company the 2006 Competitive Local Exchange Regulatory Assessment Fee Return, Form PSC/CMP 7 (01/05), as required by Rule 25-4.0161, Florida Administrative Code. **(Tan, West)**

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