

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: February 1, 2007

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

FROM: Division of Competitive Markets & Enforcement (Curry, Ollila)
Office of the General Counsel (McKay, Tan)

RE: Docket No. 060621-TX – Compliance investigation of Baldwin County Internet/DSSI Service, L.L.C. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

AGENDA: 02/13/07 – 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\060621.RCM.DOC

Case Background

On September 14, 2006, staff opened Docket No. 060621-TX against Baldwin County Internet/DSSI Service, L.L.C. (Baldwin) for its apparent violation of Section 364.183(1), F.S., Access to Company Records. On May 26, 2006, and July 20, 2006, staff sent certified letters to Baldwin requesting data contained in the company's records for inclusion in the Commission's annual report to the Legislature on the status of local competition in Florida (local competition report). Baldwin signed the return receipt card for each certified letter that was sent. After not receiving a response, staff made three telephone calls to the company on July 28, July 29, and August 10, 2006. Each time staff called there was no answer.

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Staff's recommendation in Docket No. 060621-TX was presented at the October 24, 2006, Agenda Conference. Per Order No. PSC-06-0955-PAA-TX, the Commission imposed a penalty in the amount of \$10,000 against Baldwin for its apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. On December 19, 2006, Baldwin protested the order and submitted a proposed settlement offer.

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 Baldwin County Internet/DSSI Service, L.L.C.'s proposed settlement offer of \$1,000 for deposit into the General Revenue Fund to resolve the apparent violation of Section 364.183(1), F. S., Access to Company Records?

Recommendation: No, the Commission should not accept Baldwin County Internet/DSSI Service, L.L.C.'s proposed settlement offer of \$1,000 for deposit into the General Revenue Fund to resolve the apparent violation of Section 364.183(1), F. S., Access to Company Records. **(Curry, Ollila, McKay, Tan)**

Staff Analysis: On December 19, 2006, staff received a proposed settlement offer from Baldwin to resolve the company's apparent violation of Section 364.183(1), F.S. After conducting an internal investigation, Baldwin's staff determined that they failed to respond to the Commission's data request because the Commission's staff addressed the requests to an employee who was no longer employed with the company. As a result, the request was never forwarded to the appropriate person responsible for handling Commission inquiries. Baldwin accepts responsibility for its failure to respond. However, the company believes that because its operations in Florida are "extremely limited," the accuracy of the Commission's annual telecommunications report was not materially harmed by its failure to submit the requested information. In 2006 the company's sales in Florida consisted of five ISDN-PRI lines. The company also believes that due to the small amount of business and revenue that the company received from its Florida customers the assessment of a \$10,000 penalty against the company would be excessive. Therefore, Baldwin has offered to submit a settlement payment in the amount of \$1,000 to resolve the company's apparent violation of Section 364.183(1), F.S. The company reported net operating revenues of \$39,999.86 for 2005. As of the date of filing this recommendation, the company has not reported its operating revenues for 2006.

Staff believes that Baldwin's proposed settlement offer is not acceptable. The company states that it did not respond to staff's data request because staff's letters were addressed to a former Baldwin employee. However, staff's letters were not addressed to a specific employee. Two Baldwin employees signed the certified mail receipts, so there is no dispute that Baldwin did receive the letters. Staff's letters clearly indicated the potential consequence of the company being assessed a penalty of up to \$25,000 as prescribed by Section 364.285, F.S., if the company failed to respond to staff's request. Furthermore, contrary to the company's belief, it is imperative that the Commission receive 100% participation to fully report the status of local telecommunications competition to the Legislature and the Governor. The company was also notified of the importance of its response.

The proposed settlement offer of \$1,000 to resolve the company's apparent violation of Section 364.183(1), F.S., is not consistent with proposals approved by the Commission in previous dockets for the same violation. The Commission has consistently accepted settlement offers of \$3,500 for the same violation in previous dockets. Since Baldwin was aware of the potential consequences for failing to respond to the data request, staff believes that the company's limited revenue should not exempt it from submitting a settlement offer that is consistent with the offers that the Commission has approved in prior dockets. In Docket Nos. 050965-TX and 060625-TX, the Commission approved settlements of \$3,500. The companies in

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those dockets reported net operating revenues of \$38,091.94 and \$6,029.90 respectively for 2005. Since Baldwin County's proposed settlement offer is not consistent with offers that the Commission has accepted for the same violation, staff recommends that the Commission not accept Baldwin County Internet/DSSI Service, L.L.C.'s offer to submit a settlement payment in the amount of \$1,000 to resolve the company's apparent violation of Section 364.183(1), F.S.

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Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1 this matter should be set for an administrative hearing and the docket should remain open pending further action. If the Commission denies staff's recommendation in Issue 1 and accepts Baldwin's settlement offer, the Order resulting from this recommendation should be final and this docket should be closed administratively once the settlement payment has been forwarded to the Division of Financial Services for deposit into the General Revenue Fund. **(McKay, Tan)**

Staff Analysis: Per Baldwin's protest of Order No. PSC-06-0955-PAA-TX, in the event the Commission does not accept the company's settlement offer, Baldwin has requested to further negotiate the settlement and requests a Section 120.57, F.S. hearing. Accordingly, if the Commission approves staff's recommendation in Issue 1 this matter should be set for an administrative hearing and this docket should remain open pending further action. If the Commission denies staff's recommendation in Issue 1 and accepts Baldwin's settlement offer, the Order resulting from this recommendation should be final and this docket should be closed administratively once the settlement payment has been forwarded to the Division of Financial Services for deposit into the General Revenue Fund.