



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-

RECEIVED-FPSC
00 MAY -4 AM 9:29
RECORDS AND REPORTING

DATE: MAY 4, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYD)

FROM: DIVISION OF LEGAL SERVICES (KEATING) *DK*
DIVISION OF COMMUNICATIONS (M. WATTS) *MW*

RE: DOCKET NO. 000239-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ATLANTIC.NET BROADBAND, INC. FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS. *SM*

AGENDA: 05/16/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000239.RCM

CASE BACKGROUND

- April 17, 1999 - Atlantic.Net Broadband, Inc. (Atlantic.Net) obtained Florida Public Service Commission Alternative Local Exchange Company Certificate Number 6070.
- June 25, 1999 - Staff mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. Staff requested a response by August 6, 1999.
- July 6, 1999 - Atlantic.Net signed for and received the certified letter.
- December 6, 1999 - Staff sent a second certified letter requesting Atlantic.Net respond to the data request no later than December 22, 1999.

DOCUMENT NUMBER-DATE

05545 MAY-48

FPSC-RECORDS/REPORTING

DATE: May 4, 2000

- February 22, 2000 - After receiving no response to its June 25, 1999 and December 6, 1999 certified letters, staff opened this docket to investigate whether Atlantic.Net should be required to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- April 10, 2000 - Commission Order No. PSC-00-0669-SC-TX was issued to show cause Atlantic.Net for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- May 1, 2000 - Atlantic.Net submitted an offer to settle this case. (Attachment A, page 4)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Atlantic.Net Broadband, Inc. to resolve the apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(M. Watts)**

STAFF ANALYSIS: Staff sent a certified letter requesting information contained in company records to Atlantic.Net on June 25, 1999, and requested a written response by August 6, 1999. Staff did not receive the requested information from Atlantic.Net. Staff sent a second certified letter requesting the information to Atlantic.Net on December 6, 1999, and requested a written response by December 22, 1999. Staff did not receive the requested information from Atlantic.Net in apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. Therefore, on February 22, 2000, staff opened this docket to require Atlantic.Net to show cause why it should not be fined or

DOCKET NO. 000239-1X
DATE: May 4, 2000

have its certificate canceled, pursuant to Section 364.285, Florida Statutes.

On May 1, 2000, Atlantic.Net sent a settlement offer (Attachment A, page 4) in response to Commission Order No. PSC-00-0669-SC-TX with an explanation of its start-up staffing problems that resulted in its failure to provide the requested information. In its settlement offer, Atlantic.Net proposed the following:

- A monetary settlement of \$3,500.
- To institute procedures to prevent this from happening again.
- To give incoming mail from the Florida Public Service Commission the highest priority in the future.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support Atlantic.Net's offer of settlement. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$3,500 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled administratively, and this docket should be closed. (Vaccaro)

STAFF ANALYSIS: This docket should remain open pending the remittance of the \$3,500 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled administratively, and this docket should be closed.



INTERNET
617-352-2912 or 800-422-7936
Fax: 352-2912702

Ref: Docket no. 000239-Tx
Order no. psc-00-0669-sc-tx
Issued April 10, 2000

Today Date 4/17/00

On March 15, 2000 we officially started our Alec operations. Prior to this date only the initial paperwork though our attorneys was completed. Due to the large number of mail we received on a daily bases; all mail that was related to the ALEC was set-aside for the startup date.

We understand that PSC has the right to audit our record. At the time that the questionnaire was sent to our office, there was no staff to receive or answer the questionnaire. On 3/01/2000, I was hired to oversee the ALEC operations, and on 3/09/2000, I submitted an answer to the questionnaire. We understand the necessary of the questionnaires as we are still having problems with ILEC at this time. It was not a intentional act of Atlantic.net broadband to withhold any information from the PCS. Due to the large amount of mail that is sent to a new clec and the small staff of a new ALEC we must prioritize all incoming mail and I can insure you that PSC will get the highest priority from now on.

We ask that the PSC reduce the fine to \$3500.00. We now have in place procedures to prevent this from happing again.

If I can be of further help you can reach me directly at 352 375-2912 extensions 4387.

A handwritten signature in cursive script that reads "Kevin Hayes".

Kevin Hayes
Director of ALEC operations
Atlantic.net Broadband