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RECORDS AND  
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May 1, 2000

Blanca Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

In re: Docket No. 000215-TX - Initiation of show cause proceedings against Smart City Networks for apparent violation of Section 364.183(1), F. S., Access to Company Records

Dear Ms. Bayo:

Enclosed please find the original and 15 copies of the Response to Show Cause Order No. PSC-00-0673-SC-TX, which is filed herewith on behalf of Smart City networks.

Thank you for your attention to this filing.

Sincerely,



David B. Erwin

DBE:jm

cc: Tim Vaccaro, Staff Attorney  
Gordon Mills, Smart City Networks

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- APP \_\_\_\_\_
- CAF \_\_\_\_\_
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings )	DOCKET NO. 000215-TX
against Smart City Networks for apparent )	
violation of Section 364.183(1), F. S., )	Filed: May 1, 2000
<u>Access to Company Records</u> )	

RESPONSE TO SHOW CAUSE  
ORDER NO. PSC-00-0673-SC-TX

Smart City Networks (formerly US Telcom), through its undersigned attorney, herewith responds to Show Cause Order No. PSC-00-0673-SC-TX, issued April 10, 2000, and states that the company should not be fined \$10,000 or have its certificate canceled for the reasons set forth in the order.

In support of its contention that a \$10,000 fine or certificate cancellation is not justified or appropriate, Smart City Networks submits the following allegations of fact and law:

1. Smart City Networks did not refuse to comply with or willfully violate Section 364.183(1), F. S. or any rule or order of the Commission, even in the context of the Commission's pronouncements in Docket No. 890216-TL, Order No. 24306. Smart City admits that it did not respond to the Commission data request, but it did not refuse to do so or willfully disregard the data request. In this regard several facts are pertinent:

a) Commission records reflect that a Commission letter was received and receipted for by Susan Medaglin, who was a temporary employee of Smart City Networks. Susan Medaglin is not now employed by Smart City Networks, and the company has no record of receipt of either the July staff data request or the December 1, 1999, Commission letter. Apparently, the Commission does not have a copy of any receipt signed by anyone from Smart City Networks for a December 1, 1999, letter, so the company can not investigate what might have happened to that communication.

b) Smart City Networks has never yet conducted any business in Florida and procedures for handling requests from Florida were not yet developed at the time of the communications in question.

c) The name of the company was changed between the first communication (data request) and the second communication (response reminder), and perhaps this may account for the inability of Smart City Networks to locate the second request.

d) Smart City Networks submits that it is guilty of simple negligence, but not guilty of a willful violation or a refusal to comply with a Commission directive.

e) Smart City Networks will take action to establish procedures for the receipt of information to preclude any future occurrences of the sort objected to in this Show Cause proceeding, and believes that such procedures are necessary due to the fact that a great deal of information from the FPSC is received by Smart City Networks, most of which is not pertinent to Smart City Networks, although some is, as in this case.

2. Smart City Networks submits that a \$10,000 fine for its failure to respond is disproportionate to the violation committed and is far greater than fines imposed by the Commission for offenses that are arguably much more serious. For example, failure of a Class C water and wastewater utility to file its Annual Report, which is probably the most important tool the Commission has to regulate such utilities and protect its customers, is governed by Commission Rule 25-30.110(7)(b), F. A. C., whereby the penalty for delinquent reports is established at \$3.00 per day for each day the report is delinquent. Similarly, in many cases, the Commission has accepted a fine of \$100.00 for failure to pay regulatory assessment fees in a timely fashion. Clearly, failure to respond to the laws that establish the duties described above of filing Annual Reports and paying taxes due would not be as subject to being overlooked as a one time request for information from a company not yet even doing business in Florida, but the fine for the latter offense is far greater.

3. The determination to fine Smart City Networks \$10,000 is invalid, since it violates Section 120.54(1)(a), Florida Statutes, which requires that all agency statements of general applicability, which meet the definition of a rule, as defined by Section 120.52(15), Florida Statutes, be adopted by rulemaking. The determination to fine Smart City Networks \$10,000 would have enforceability only if it had been adopted as a rule, as provided in Section 120.54, Florida Statutes, and that has not been done. Consequently, the fine by the Commission could be successfully challenged under Section 120.56(4)(a), Florida Statutes.

Over time, the Commission has developed a constant position that violation of Commission Rule 25-4.043, F.A.C., and Section 364.183(1), Florida Statutes, will result in imposition of a \$10,000 fine. See the following Orders:

- a) Order No. PSC-00-0401-SC-TI, issued February 24, 1999
- b) Order No. PSC-00-2343-SC-TC, issued December 3, 1999
- c) Order No. PSC-00-2085-SC-TI, issued October 22, 1999
- d) More than 20 orders issued in April, 2000 to various companies in addition to Smart City Networks for the same alleged violations.

In addition, Smart City Networks believes that there is a "matrix" used by Staff to determine the amount of fines for various offenses, and that the fine for failure to respond to a staff inquiry is \$10,000.

WHEREFORE and in consideration of the above, Smart City Networks submits that it should not be fined \$10,000 nor should it have its certificate canceled for its inadvertent failure to respond to staff's request for data. Instead, Smart City Networks hereby promises to institute procedures and controls to prevent any repeat occurrence of the problem of non-responsiveness.

Respectfully submitted,



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Attorney for Smart City Networks