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State of Florida



08 OCT 30 2008 **Public Service Commission**

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 30, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (M. Watts) *MW*
Office of the General Counsel (Tan) *Tan*
Office of Strategic Analysis and Governmental Affairs (Hunter, Shafer) *GS*

RE: Docket No. 080450-TX – Compliance investigation of Tristar Communications Corp. for apparent violation of Section 364.183(1), F.S., Access to Company Records.

AGENDA: 11/13/08 – 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\RCP\WP\080450s.RCM.DOC

Case Background

On July 8, 2008, staff opened Docket No. 080450-TX against Tristar Communications Corp. (TCC) for its apparent violation of Section 364.183(1), Florida Statutes (F.S.), Access to Company Records. On February 15, 2008, staff sent a certified letter via the United States Postal Service to TCC requesting data contained in its company records. The data was required to compile the Commission's annual report to the Legislature on the status of local competition in Florida (local competition report). TCC did receive the certified letter.

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Staff also sent an e-mail to TCC advising that a response was past due. In an effort to collect the required data, staff attempts to contact all companies via telephone calls or e-mails, reminding them that a response has not been received. The deadline established for receipt of the data was April 15, 2008. In this case, TCC advised staff that the data would be supplied by May 16, 2008. TCC did not provide a response until June 17, 2008, which was too late to incorporate into the local competition report.

Staff's recommendation in Docket No. 080450-TX was presented to the Commission at the September 4, 2008 Agenda Conference. On September 24, 2008, the Commission issued Proposed Agency Action (PAA) Order No. PSC-08-0628-PAA-TX imposing a \$10,000 penalty on TCC for its apparent violation of Section 364.183(1), F.S. On October 13, 2008, TCC submitted a settlement proposal. This recommendation addresses TCC's proposed settlement.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285 and 364.386, F.S. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission accept Tristar Communications Corp.'s settlement offer to voluntarily contribute \$3,500 to the Commission for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), F.S.?

Recommendation: Yes. The Commission should accept the company's settlement offer to voluntarily contribute \$3,500 to the Commission for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order. (M. Watts/Tan)

Staff Analysis: On October 13, 2008, Mr. Nathan Gross, president of TCC, submitted an offer to settle the issue in this docket. In the letter, Mr. Gross stated that TCC tried to timely respond to the data request, but had to wait for information from an outside billing company. The billing company did not timely provide the data to TCC. To correct this situation, TCC has now brought its billing system in-house. TCC claims that direct access to its data will allow it to timely respond to any future data requests.

To resolve the apparent violation of Section 364.183(1), F.S., TCC has offered to make a voluntary contribution of \$3,500 to the Commission for deposit in the General Revenue Fund. The amount of the settlement offer is consistent with the Commission's action in accepting similar terms of settlement for the same violation in Docket No. 050955-TX, In Re: Compliance investigation of Cypress Communications Operating Company, LLC for apparent violation of Section 364.183(1), F.S., Access to Company Records.

Accordingly, staff recommends that the Commission accept Tristar Communications Corp.'s settlement offer to voluntarily contribute \$3,500 to the Commission for deposit in the General Revenue Fund within 30 days of the issuance of the Consummating Order to resolve its apparent violation of Section 364.183(1), F.S.

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Issue 2: Should this docket be closed?

Recommendation: If no person, whose substantial interests are affected by the proposed actions files a protest of the Commission's decision on Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of the Consummating Order. If the Commission's Order is not protested and TCC complies with its settlement offer, this docket should be closed administratively. If TCC fails to remit the voluntary contribution of \$3,500 to the Commission within 30 days of the issuance of the Consummating Order, Certificate No. 8656 should be canceled as set forth in PAA Order No. PSC-08-0628-PAA-TX, and this docket should be closed administratively. If TCC's certificate is canceled, TCC should be required to immediately cease and desist providing telecommunications services in Florida. **(Tan)**

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