



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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RECORDS AND REPORTING

**DATE:** MAY 25, 2000

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

**FROM:** DIVISION OF LEGAL SERVICES (VACCARO) *W*  
DIVISION OF COMMUNICATIONS (M. WATTS) *MW*

**RE:** DOCKET NO. 000217-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ATI TELECOM, INC. FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

**AGENDA:** 06/06/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\000217.RCM

### CASE BACKGROUND

- June 21, 1997 - ATI Telecom, Inc. (ATI) obtained Florida Public Service Commission Alternative Local Exchange Company Certificate Number 5164.
- 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 - ATI signed for and received the certified letter.
- December 6, 1999 - Staff sent a second certified letter requesting ATI respond to the data request no later than December 22, 1999.

DOCUMENT NUMBER-DATE

06456 MAY 25 8

FPSC-RECORDS/REPORTING

DATE: May 25, 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 ATI 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 7, 2000 - Commission Order No. PSC-00-0648-SC-TX was issued to show cause ATI for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- May 18, 2000 - ATI submitted an offer to settle this case. (Attachment A, pages 4-5)

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept the settlement offer proposed by ATI Telecom, 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 ATI on June 25, 1999, and requested a written response by August 6, 1999. Staff did not receive the requested information from ATI. Staff sent a second certified letter requesting the information to ATI on December 6, 1999, and requested a written response by December 22, 1999. Staff did not receive the requested information from ATI 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 ATI to show cause why it should not be fined or have its certificate canceled, pursuant to Section 364.285, Florida Statutes.

DATE: May 25, 2000

On May 18, 2000, ATI sent a settlement offer (Attachment A, pages 4-5) in response to Commission Order No. PSC-00-0648-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, ATI proposed the following:

- A monetary settlement of \$3,500.
- To institute procedures to preclude this from happening again.

Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support ATI'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.

**LAW OFFICES OF THOMAS K. CROWE, P.C.**

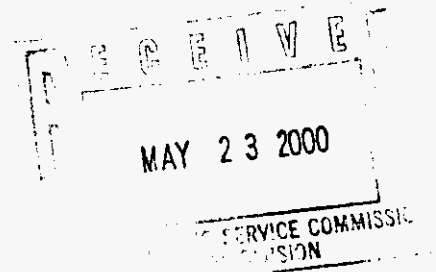
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May 22, 2000

**BY FEDEX**

Tim Vaccaro  
Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850



Re: ATI Telecom, Inc.; Docket No. 000217-TX;  
Settlement Offer to Order No. PSC-00-0648-SC-TX

Dear Mr. Vaccaro:

The following settlement is offered on behalf of ATI Telecom, Inc. ("ATI") in relation to the Commission's March 28, 2000 Order to Show Cause ("Order") in the above-captioned proceeding. The Order required ATI to show cause as to why it failed to respond to the Commission's local competition questionnaire. ATI timely filed a Response with the Commission on April 28, 2000, in which it explained that its failure to reply was not "wilful" within the meaning of Section 364.285, Florida Statutes, Fla. Stat. ch. 364.285 (1999) and, therefore, no penalty at all should be imposed by the Commission.

ATI wishes to put this matter behind it without the expenditure of additional resources for a hearing or other legal process. ATI also recognizes that the Commission's resources are better devoted to more important matters. Accordingly, ATI is willing to offer a voluntary settlement or payment of \$3,500 to the State of Florida to resolve this matter. ATI respectfully requests that any order or ruling by the Commission in this matter reflect that 1) the payment is a voluntary settlement (and not reflect that it is a fine); and 2) no determination as to fault or violation is being made.

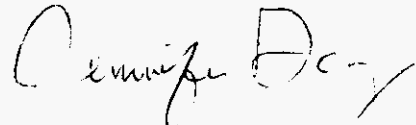
It is also important to note that ATI has taken the necessary steps to prevent an incident

Tim Vaccaro  
May 22, 2000  
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similar to the one which led to the issuance of the Order from occurring again in the future. The circumstances which gave rise to the Order involved 1) confusion over ATI's current contact address and 2) a 1999 office relocation. These problems have been addressed as ATI returned a completed form to the Commission in March, 2000 to update information contained in the Master Commission Directory of Regulated Utilities. The form shows the company's new business address and new contact person, Susan Cutright, Vice President and General Counsel (*see* enclosed form). As a result, all correspondence from the Commission will be properly routed such that it will receive prompt attention and a response, where necessary. ATI takes its obligations as a certified carrier very seriously and places a high degree of importance on responding to all regulatory notices on a timely basis.

Please file-stamp and return the extra copy of this filing in the self-addressed, stamped envelope for this purpose. All communications concerning this letter should be directed to the undersigned.

Sincerely,



Thomas K. Crowe  
Jennifer Gorny,  
Counsel for ATI Telecom, Inc.

Enclosures

cc: Melinda Watts, Florida Public Service Commission (via fax)