

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Foxtel, Inc.
for apparent violation of Rule 25-4.0161,
F.A.C., Regulatory Assessment Fees;
Telecommunications Companies.

DOCKET NO. 040426-TX
ORDER NO. PSC-04-0696-PAA-TX
ISSUED: July 16, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING PENALTY, OR CANCELLING
COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a certificate if a company refuses to comply with this Commission's rules or any provision of Chapter 364, Florida Statutes. Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of Regulatory Assessment Fees (RAFs) by January 30th of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Foxtel, Inc. (Foxtel) is a certificated competitive local exchange telecommunications company (CLEC) based in Reno, Nevada that provides competitive local exchange telecommunications services in Florida. On December 3, 2003, our staff contacted the company's liaison and was informed that Foxtel was no longer in business. On December 12, 2003, the Division of the Commission Clerk & Administrative Services mailed the 2003 RAFs return notice to Foxtel. The company's RAFs payment was due by January 30, 2004. On February 19, 2004, the Office of General Counsel mailed a delinquent notice via certified mail to the company for nonpayment of its 2003 RAFs. Both letters were returned by the United States

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Postal Service. The company moved and left no forwarding address. As required by Rule 25-24.0161, Florida Administrative Code, Foxtel has failed to pay its 2003 RAFs. Therefore, Foxtel is in apparent violation of Rule 25-4.0161, Florida Administration Code, Regulatory Assessment Fees; Telecommunications Companies.

This Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes. Foxtel has failed to pay its 2003 RAFs, plus statutory late payment and interest charges, in compliance with Rule 25-4.0161, Florida Administrative Code. In addition, Foxtel has not requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the company's obligation to pay RAFs, including statutory late payment and interest charges, if the certificate was active during any portion of the calendar year, including the cancellation year. Furthermore, the amount of the proposed penalty is consistent with penalties previously imposed by this Commission upon other competitive local exchange telecommunications companies for similar violations. Therefore, this Commission imposes a penalty upon Foxtel in the amount of \$500, for its apparent violation of Rule 25-4.0161, Florida Administration Code, Regulatory Assessment Fees; Telecommunications Companies.

This Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by this Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. If Foxtel fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts shall be deemed admitted, the right to a hearing waived, and the penalty shall be deemed assessed. If Foxtel fails to pay the penalty and 2003 RAFs, including statutory late payment and interest charges, within fourteen (14) calendar days after the issuance of the Consummating Order, Certificate No. 8041 shall be cancelled administratively and the collection of the 2003 RAFs, including statutory late payment and interest charges, shall be referred to the Department of Financial Services for further collection efforts. This docket shall be closed administratively upon either the receipt of the \$500 penalty payment and 2003 RAFs, including statutory late payment and interest charges, or upon the cancellation of the company's certificate. If Foxtel's certificate is cancelled in accordance with this Commission's Order, the company shall be required to immediately cease and desist providing competitive local exchange services in Florida.

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Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that Foxtel, Inc. is hereby assessed a penalty of \$500 for its apparent violation of Rule 25-4.0161, Florida Administration Code, Regulatory Assessment Fees; Telecommunications Companies. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that should Foxtel, Inc. fail to timely protest this Order, the facts shall be deemed admitted, the right to a hearing waived, and the penalty shall be deemed assessed. It is further

ORDERED that any protest must identify with specificity the issues in dispute. In accordance with Section 120.80(13)(b), Florida Statutes, issues not in dispute will be deemed stipulated. It is further

ORDERED that should Foxtel, Inc. fail to timely protest this Order, payment of the \$500 penalty and 2003 Regulatory Assessment Fees, including statutory late payment and interest charges, must be received within fourteen calendar days after the issuance of the Consummating Order. It is further

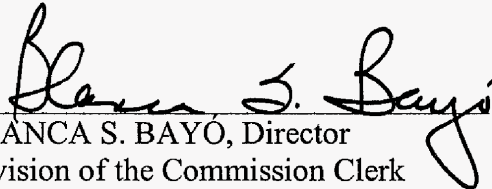
ORDERED that if this Order is not protested and the penalty is not received within fourteen calendar days of the issuance of the Consummating Order, the 2003 Regulatory Assessment Fees, including statutory late payment and interest charges, shall be referred to the Department of Financial Services for further collection efforts and Competitive Local Exchange Telecommunications Certificate No. 8041 shall be cancelled and the company shall be required to cease and desist providing competitive local exchange telecommunications services in Florida. It is further

ORDERED that if this Order is not timely protested, this Docket shall be closed administratively upon: 1) receipt of the \$500 penalty payment and 2003 Regulatory Assessment Fees, including statutory late payment and interest charges; 2) upon the cancellation of the company's certificate; or 3) referral of the 2003 Regulatory Assessment Fees, including statutory late payment and interest charges, to the Department of Financial Services for further collection efforts.

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By ORDER of the Florida Public Service Commission this 16th day of July, 2004.

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BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 6, 2004.

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In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.