

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida Public Service Commission of Alternative Local Exchange Telecommunications Certificate No. 4424 issued to Telenet of South Florida, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 981569-TX
ORDER NO. PSC-99-0669-FOF-TX
ISSUED: April 6, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING FINE AND REQUIRING PAYMENT OF REGULATORY
ASSESSMENT FEES, OR CANCELING ALTERNATIVE 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.

Telenet of South Florida, Inc. (Telenet) obtained Certificate No. 4424 on May 9, 1996. Telenet has not paid the regulatory assessment fees required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 1998,

DOCUMENT NUMBER-DATE

04407 APR-6 99

FPSC-RECORDS/REPORTING

along with statutory penalties and interest charges for 1997 and 1998. Under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual regulatory assessment fee of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing alternative local exchange telecommunications service and an affidavit in which the applicants attest that the rules have been received and understood by the applicant. This affidavit must be attached to the application in order for the application to be processed.

Pursuant to Section 350.113(4), Florida Statutes, the regulatory assessment fee forms, for the period of January 1, through December 31, are mailed to the entities at least 45 days prior to the date that payment of the fee is due. Telenet has been given adequate opportunity to pay. To date, Telenet has not paid the required fees. Thus, it appears that Telenet has violated Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Rule 25-24.835, F.A.C., Records & Reports; Rules Incorporated, incorporates Rule 25-4.043, Florida Administrative Code, which states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

On August 13, September 10, and October 1, our Division of Records and Reporting received USPS returned mail which had been sent to Telenet. The first two returned envelopes were stamped "return to sender" and "attempted, not known." The latest returned mail was stamped "return to sender" and "moved, left no forwarding address."

On July 10, 1998, our staff sent Telenet a data request and asked for a response by August 7, 1998. When the company did not respond, a certified letter was sent September 2, 1998. The USPS returned the unopened envelope stamped "return to sender" and "attempted, not known."

Rule 25-4.043 requires companies to respond to inquiries from Commission staff within 15 days. Telenet has failed to respond to written inquiries. Our staff sought to contact Telenet by telephone. To date, Telenet has not responded. Thus, it appears that Telenet has violated Rule 25-4.043, Florida Administrative Code.

Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of an ALEC certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Conclusion

For the reasons described above, pursuant to Rule 25-24.820(1)(b) and (c), Florida Administrative Code, we find it appropriate to cancel Telenet's certificate for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, unless Telenet pays a \$500 fine and remits all past due regulatory assessment fees, along with statutory penalties and interest charges, to the Florida Public Service Commission. We also find it appropriate to assess a \$10,000 fine to Telenet for failure to comply with Rule 25-4.043, Florida Administrative Code.

Telenet must comply with these requirements within five business days from the date this Order becomes final. The fine will be remitted to the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.516, Florida Statutes.

When the appropriate fees, statutory penalties, interest charges, and fines are received, this Docket shall be closed. Should Telenet fail to comply with this Order within five business days from the date this Order becomes final, Telenet shall have its certificate canceled, and the Docket shall be closed. The cancellation of the certificate and the closing of the Docket in no way diminishes Telenet's obligation to pay applicable delinquent regulatory assessment fees, statutory penalties, interest charges, and fines.

ORDER NO. PSC-99-0669-FOF-TX
DOCKET NO. 981569-TX
PAGE 4

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Telenet of South Florida, Inc. must pay the past due regulatory assessment fees, statutory penalties, interest charges, and a \$500 fine to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, within five business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that Telenet of South Florida, Inc. must pay a \$10,000 fine to the Florida Public Service Commission for failure to comply with Rule 25-4.043, Florida Administrative Code, within five business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that should Telenet of South Florida, Inc. fail to comply with this Order, Telenet of South Florida, Inc.'s Certificate No. 4424 shall be canceled, and the Docket shall be closed. The fines shall be forwarded to the Office of the Comptroller for collection. It is further

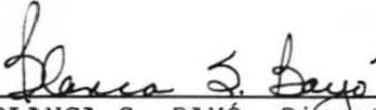
ORDERED that the cancellation of the certificate and the closing of the docket in no way diminishes Telenet of South Florida, Inc.'s obligation to pay the fines and the applicable delinquent regulatory assessment fees, statutory penalties, and interest charges. It is further

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

ORDERED that in the event this Order becomes final, this Docket shall be closed upon payment of the fine, and fees, or upon cancellation of the certificate.

ORDER NO. PSC-99-0669-FOF-TX
DOCKET NO. 981569-TX
PAGE 5

By ORDER of the Florida Public Service Commission this 6th
day of April, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JAM

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 27, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

ORDER NO. PSC-99-0669-FOF-TX
DOCKET NO. 981569-TX
PAGE 6

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

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.