

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of
ALEC Certificate No. 7721 issued
to Positive Investments, Inc.
for violation of Rule 25-4.0161,
F.A.C., Regulatory Assessment
Fees; Telecommunications
Companies.

DOCKET NO. 020478-TX
ORDER NO. PSC-02-0990-PAA-TX
ISSUED: July 22, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELING ALTERNATIVE LOCAL EXCHANGE
TELECOMMUNICATIONS CERTIFICATE INVOLUNTARILY

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.

Positive Investments, Inc. (Positive Investments) currently
holds Certificate of Public Convenience and Necessity No. 7721,
issued by the Commission on January 18, 2001, authorizing the
provision of Alternative Local Exchange Telecommunications service.
The Division of the Commission Clerk and Administrative Services
advised our staff that Positive Investments had not paid the
Regulatory Assessment Fees (RAFs) required by Section 364.336,
Florida Statutes, and Rule 25-4.0161, Florida Administrative Code,

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for the year 2001. Also, accrued statutory penalties and interest charges for late RAFs payments for the year 2001 had not been paid. Positive Investments was scheduled to remit its RAFs by January 30, 2002.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF 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. Pursuant to Section 350.113(4), Florida Statutes, the RAFs forms, for the period of January 1, through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due. All entities that apply for certification receive a copy of our rules governing Alternative Local Exchange Telecommunications service.

On April 10, 2002, the Division of the Commission Clerk & Administrative Services received a letter from the Positive Investments' General Manager, Kendall B. Howell, which advised that Positive Investments was no longer in business. Our staff wrote Positive Investments on April 12, 2002, and advised that in order to be granted a voluntary cancellation, Positive Investments must pay the past due 2001 RAFs, including statutory penalty and interest charges, and comply with Rule 25-24.820, Florida Administrative Code. As of June 19, 2002, Positive Investments has not paid the 2001 RAFs nor provided a date certain the 2002 RAFs would be paid.

Positive Investments has not complied with Rule 25-24.820(2), Florida Administrative Code, which states:

(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following with its request. Cancellation of a certificate shall be ordered subject to the holder providing the required information.

(a) A statement of intent and date certain to pay regulatory assessment fee.

(b) A statement of why the certificate is proposed to be cancelled.

(c) A statement as to how customer deposits and final bills will be handled.

(d) Proof of individual customer notice regarding discontinuance of service.

Accordingly, since the company's certificate remains active until it requests a voluntary cancellation pursuant to Rule 25-24.820(2), Florida Administrative Code, or we involuntarily cancel the certificate, Positive Investments is responsible for the RAFs.

For the reasons described above, pursuant to Rule 25-24.820(1)(b) and (c), Florida Administrative Code, we deny Positive Investments' request for voluntary cancellation of Alternative Local Exchange Telecommunications Certificate No. 7721 for failure to comply with the provisions of Rule 25-24.820(2), Florida Administrative Code. However, we find it appropriate to involuntarily cancel Positive Investments' certificate, effective April 10, 2002, for failure to pay RAFs pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Since Positive Investments is no longer in business, there would be no purpose in requiring Positive Investments to pay a fine. By involuntarily canceling Positive Investments' certificate, however, we would be able to track this company should it apply for another certificate with us in the future. The cancellation of the certificate and the closing of the Docket in no way diminishes Positive Investments' obligation to pay applicable delinquent RAFs, statutory penalties, and interest charges. The collection of the past due fees shall be referred to the Office of the Comptroller for further collection efforts. We are vested with jurisdiction over this matter pursuant to Sections 364.336 and 364.285, Florida Statutes.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that we hereby deny Positive Investments, Inc.'s request for voluntary cancellation of Alternative Local Exchange Telecommunications Certificate No. 7721. It is further

ORDERED that pursuant to Rule 25-24.820(1)(b) and (c), Florida Administrative Code, we hereby cancel Positive Investments, Inc.'s Alternative Local Exchange Telecommunications Certificate No. 7721, effective April 10, 2002, for failure to comply with Rule 25-24.820(2), Florida Administrative Code; Section 364.336, Florida Statutes; and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that the cancellation of the certificate in no way diminishes Positive Investments, Inc.'s obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory penalties and interest charges. The collection of the past due fees shall be referred to the Office of the Comptroller for further collection efforts. 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 in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 22nd
Day of July, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

KMP

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 12, 2002.

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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.