

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of  
ALEC Certificate No. 7779 issued  
to NxGen Networks, Inc. for  
violation of Rules 25-4.0161,  
F.A.C., Regulatory Assessment  
Fees; Telecommunications  
Companies, and 25-24.835,  
F.A.C., Rules Incorporated.

DOCKET NO. 020626-TX  
ORDER NO. PSC-02-1338-PAA-TX  
ISSUED: October 2, 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 IMPOSING PENALTIES, REQUIRING PAYMENT OF  
DELINQUENT REGULATORY ASSESSMENT FEES AND REQUIRING  
INFORMATION IN ACCORDANCE WITH RULE 25-24.835, FLORIDA  
ADMINISTRATIVE CODE, 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.

NxGen Networks, Inc. (NxGen) currently holds Certificate of  
Public Convenience and Necessity No. 7779, issued by the Commission  
on April 5, 2001, authorizing the provision of Alternative Local  
Exchange Telecommunications (ALEC) service. The Division of the

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Commission Clerk and Administrative Services advised our staff that NxGen had not paid the Regulatory Assessment Fees (RAFs) required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 2001. Also, accrued statutory penalties and interest charges for late RAFs payments for the year 2001 had not been paid. NxGen 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 ALEC service.

In addition, other Commission correspondence to NxGen was returned by the United States Postal Service. The return of these materials indicates that NxGen may have violated Rule 25-24.835, Florida Administrative Code, which requires the reporting to the Commission of an address change and/or a change in the name, title, or telephone number of the individual responsible for Commission contacts, within ten (10) days of its effectiveness. It has been well over 10 days and NxGen has not provided the information required by Rule 25-24.835, Florida Administrative Code, nor has it requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code.

For the reasons described above, pursuant to Rule 25-24.820(1)(b) and (c), Florida Administrative Code, we find it appropriate to cancel NxGen's certificate for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, unless NxGen pays a \$500 penalty and remits all past due RAFs, along with accrued statutory penalties and interest charges, to the Florida Public Service Commission. We also find it appropriate to cancel NxGen's certificate for failure to comply with Rule 25-24.835, Florida Administrative Code, unless NxGen pays a \$500 penalty and provides the information required by Rule 25-24.835, Florida Administrative Code, to the Florida Public

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Service Commission. NxGen must comply with these requirements within 14 days after the issuance of the Consummating Order, as explained in the Notice of Further Proceedings attached to this Order. The payment should be identified with the docket number and the company's name. The two penalties, totaling \$1,000, will be remitted to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285 (1), Florida Statutes.

When the appropriate fees, statutory penalties, interest charges, required information, and penalties are received, this docket shall be closed. Should NxGen fail to comply with this Order within 14 days after the issuance of the Consummating Order, NxGen shall have its certificate canceled, effective on the date of issuance of the Consummating Order; the collection of the past due fees shall be referred to the Office of the Comptroller for further collection efforts; and the docket shall be closed. The cancellation of the certificate in no way diminishes NxGen's obligation to pay applicable delinquent RAFs, and accrued statutory penalties and interest charges. If NxGen's certificate is canceled in accordance with this Order, NxGen shall immediately cease and desist providing ALEC services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that NxGen Networks, Inc. shall pay the past due Regulatory Assessment Fees, statutory penalties, interest charges, and a \$500 penalty 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 14 days after the issuance of the Consummating Order. The penalty will be transmitted to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that NxGen Networks, Inc. must provide the correct mailing address, liaison information, and other information in accordance with Rule 25-24.835, Florida Administrative Code, and pay a \$500 penalty to the Florida Public Service Commission for failure to comply with Rule 25-24.835, Florida Administrative Code,

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within 14 days after the issuance of the Consummating Order. The penalty will be transmitted to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that should NxGen Networks, Inc. fail to comply with this Order, NxGen Networks, Inc.'s Certificate No. 7779 shall be canceled, effective on the date of issuance of the Consummating Order; the collection of the past due fees shall be referred to the Office of the Comptroller for further collection efforts; and the docket shall be closed. It is further

ORDERED that the cancellation of the certificate in no way diminishes NxGen Networks, Inc.'s obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory penalties and interest charges. It is further

ORDERED that if NxGen Networks, Inc.'s certificate is canceled in accordance with this Order, NxGen Networks, Inc. shall immediately cease and desist providing Alternative Local Exchange Telecommunications services in Florida. It is further

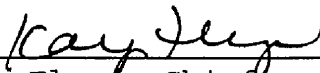
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission 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 upon receipt of the required information and payment of the penalties and fees, or upon cancellation of the certificate.

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By ORDER of the Florida Public Service Commission this 2nd Day  
of October, 2002.

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

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

( S E A L )

LHD

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.

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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 October 23, 2002.

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.