

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of  
ALEC Certificate No. 7970 issued  
to Calpoint (Florida), LLC for  
violation of Rule 25-4.0161,  
F.A.C., Regulatory Assessment  
Fees; Telecommunications  
Companies.

DOCKET NO. 021161-TX  
ORDER NO. PSC-03-0042-PAA-TX  
ISSUED: January 7, 2003

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 PENALTY AND REQUIRING PAYMENT OF DELINQUENT  
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.

Calpoint (Florida), LLC (Calpoint) currently holds Certificate  
of Public Convenience and Necessity No. 7970, issued by the  
Commission on December 11, 2001, authorizing the provision of  
Alternative Local Exchange Telecommunications (ALEC) services. In  
reconciling active certificates with the certificate holders that  
had not paid the RAF, our staff discovered that this company had  
not been mailed the 2001 Regulatory Assessment Fee return form

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since its certificate did not become effective until December 11, 2001. On August 27, 2002, our staff mailed a letter, which explained that the 2001 RAF return form had inadvertently not been mailed and included a copy of the Order granting the company's certificate, which states that the RAF is due annually. Our staff explained that Rule 25-4.0161(7)(d), Florida Administrative Code, provides that failure to receive a form shall not excuse a telecommunications company from its obligation to pay the fee timely. Our staff included the 2001 RAF return form and requested payment by September 17, 2002. When payment had not been received, staff called the company. The company requested that our staff fax the 2001 RAF return form, which was done on October 23, 2002. As of November 15, 2002, payment had not been received, therefore, this docket was established.

As of November 27, 2002, the company has not paid its 2001 Regulatory Assessment Fee, plus statutory penalty and interest charges. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, and has not requested cancellation of its certificate in compliance with Rule 25-24.820, Florida Administrative Code. The penalty amount assessed in this docket is consistent with amounts imposed for recent, similar violations. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay Regulatory Assessment Fees, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

Accordingly, we find it appropriate to assess a penalty of \$500 for violation of Rule 25-4.0161, Florida Administrative Code, incorporated by Rule 25-24.835, Florida Administrative Code, effective December 31, 2002, if the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The penalty of \$500 should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company does not protest this Order, or if the

ORDER NO. PSC-03-0042-PAA-TX  
DOCKET NO. 021161-TX  
PAGE 3

penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received in accordance with this Order, the company's certificate should be cancelled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If the company's certificate is cancelled in accordance with this Order, the company should be required to immediately cease and desist providing alternative local exchange carrier 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 Calpoint (Florida), LLC 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 date of 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 pursuant to Rule 25-24.820(1)(b), Florida Administrative Code, should Calpoint (Florida), LLC fail to comply with this Order, Calpoint (Florida), LLC's Certificate No. 7970 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 Calpoint (Florida), LLC's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory penalties and interest charges. It is further

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

ORDER NO. PSC-03-0042-PAA-TX  
DOCKET NO. 021161-TX  
PAGE 4

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 payment of the penalty and fees, or upon cancellation of the certificate.

By ORDER of the Florida Public Service Commission this 7th day of January, 2003.

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

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

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ORDER NO. PSC-03-0042-PAA-TX  
DOCKET NO. 021161-TX  
PAGE 5

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 January 28, 2003.

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.