

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of AAV certificate holders for apparent second-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.	DOCKET NO. 060468-TA ORDER NO. PSC-06-0617-PAA-TA ISSUED: July 20, 2006
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NOTICE OF PROPOSED AGENCY ACTION ORDER IMPOSING PENALTIES AND COLLECTION COSTS, AND REQUIRING PAYMENT OF DELINQUENT REGULATORY ASSESSMENT FEES, OR CANCELLING AAV CERTIFICATE FOR VIOLATION OF RULE 25-4.0161, FLORIDA ADMINISTRATIVE CODE

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 Rule 25-4.0161(10), Florida Administrative Code, telecommunications companies that fail to pay the Regulatory Assessment Fee, including statutory late payment charges, within 15 days after receiving a delinquent notice, shall be automatically penalized \$500 for a first offense, \$1,000 for a second offense, and \$2,000 for a third offense. The penalty amounts include collection costs. If an entity fails to pay the Regulatory Assessment Fee in full, including statutory late payment charges, along with the penalty amount, that entity's certificate shall be cancelled.

Pursuant to 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. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return 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 a certificate receive a copy of our rules governing alternative access vendor service (AAV).

The Division of the Commission Clerk and Administrative Services (CCA) advised our staff that Winstar Communications, LLC, Company Code TA065, failed to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. In addition, Winstar Communications, LLC has had a prior docket for the same rule violation in which the company proposed a settlement to resolve its docket.

Accordingly, we hereby find it appropriate to cancel Winstar Communications, LLC's AAV certificate for failure to comply with Section 364.336, Florida Statutes, and Rule 25-

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4.0161, Florida Administrative Code, unless Winstar Communications, LLC pays a penalty and cost of collection, together totaling \$1,000, and remits any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, to the Florida Public Service Commission.

If this Order is not protested, Winstar Communications, LLC's AAV certificate shall be cancelled. If Winstar Communications, LLC pays the penalty and cost of collection, together totaling \$1,000, and remits any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, prior to the expiration of the Proposed Agency Action Order, then Winstar Communications, LLC's AAV certificate will remain active. If Winstar Communications, LLC fails to protest the Order or pay the penalty and cost of collection, together totaling \$1,000, and fails to remit any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, prior to the expiration of the Proposed Agency Action Order, then Winstar Communications, LLC's AAV certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If Winstar Communications, LLC's AAV certificate is cancelled in accordance with this Commission's Order, that company should be required to immediately cease and desist providing alternative access vendor service in Florida. This docket should be closed administratively either upon receipt of the payment of the penalty and cost of collection, together totaling \$1,000, and any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, or upon cancellation of Winstar Communications, LLC's AAV certificate. If Winstar Communications, LLC's AAV certificate is cancelled in accordance with this Order and it subsequently decides to reapply for a certificate as a alternative access vendor company, Winstar Communications, LLC shall be required to first pay the penalty and cost of collection, together totaling \$1,000 and any outstanding fees, including accrued statutory late payment charges. We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Winstar Communications, LLC shall pay a penalty and cost of collection, together totaling \$1,000, and any past due Regulatory Assessment Fees, including statutory late payment charges, to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, by the end of the protest period. The cost of collection will be subtracted from any monies collected as payment (full or partial) of the penalty and cost of collection, and will be deposited, along with the past due Regulatory Assessment Fees, in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. The statutory late payment charges and any portion of the penalty exceeding the cost of collection will be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that should Winstar Communications, LLC fail to comply with this Order, that entity's certificate shall be cancelled. It is further

ORDERED that the cancellation of the certificate in no way diminishes Winstar Communications, LLC's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. If Winstar Communications, LLC has its certificate cancelled, and subsequently decides to reapply for certification as a alternative access vendor company, that company shall be required to first pay any outstanding penalties and cost of collection and fees, including accrued statutory late payment charges. Any unpaid Regulatory Assessment Fees, and accrued statutory late payment charges, shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Winstar Communications, LLC's certificate is cancelled in accordance with this Order, that entity shall immediately cease and desist providing alternative access vendor service 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 imposed penalty and cost of collection, together totaling \$1,000, and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of Winstar Communications, LLC's AAV certificate.

By ORDER of the Florida Public Service Commission this 20th day of July, 2006.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

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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 10, 2006.

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.