

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of AAV
Certificate No. 7790, issued to A.SUR Net,
Inc., for apparent fourth-time violation of Rule
25-4.0161, F.A.C., Regulatory Assessment
Fees; Telecommunications Companies.

DOCKET NO. 20200141-TA
ORDER NO. PSC-2020-0203-PAA-TA
ISSUED: June 24, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING PENALTY AND COLLECTION COST, AND REQUIRING PAYMENT
OF DELINQUENT REGULATORY ASSESSMENT FEE, OR CANCELLING AAV
CERTIFICATE AND REMOVAL FROM THE REGISTER FOR VIOLATION OF SECTION
364.335, FLORIDA STATUTES, AND RULE 25-4.0161, FLORIDA ADMINISTRATIVE
CODE, REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission (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 (F.A.C.).

Background

A.SUR Net, Inc. (A.SUR Net or Company) is a regulated telecommunications company located in North Miami Beach, Florida. We approved the Company's application for an alternative access vendor (AAV) certificate on March 15, 2001, by Order No. PSC-01-0647-PAA-TA. Pursuant to Section 364.336, Florida Statutes (F.S.), certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate was active during any portion of the calendar year.

Pursuant to Section 350.113(4), F.S., RAF forms are mailed to regulated companies for the period January 1 through December 31, at least 45 days prior to the date that payment of the

fee is due. Pursuant to Rule 25-4.0161(2), Florida Administrative Code (F.A.C.), the RAF form and applicable fees are due to this Commission by January 30 of the subsequent year.

In keeping with this Commission's rules and statutes, 2019 RAF forms were mailed on December 9, 2019, for the period January 1, 2019 through December 31, 2019. The RAF form and applicable fees were due on or before January 30, 2020. As of the date of this Order, we have not received payment from A.SUR Net.

On February 20, 2020, we mailed a letter to the Company informing it that, according to our records, its RAF payment had not yet been received, and was past due. The letter also informed the Company that payment would need to be postmarked within 15 calendar days of receipt of the notice, as evidenced by the certified mail receipt, and, if not received by that date, a RAF rule violation penalty would be imposed. Pursuant to Rule 25-4.0161, F.A.C., a RAF rule violation penalty of \$500, \$1,000, or \$2,000 is automatically imposed, depending on the number of previous dockets opened against the entity for violation of the RAF rule.

A.SUR Net had three prior dockets opened for violation of Rule 25-4.0161, F.A.C.—Docket No. 20060463-TA, Docket No. 20070346-TA, and Docket No. 20090222-TA. Because this docket was opened for an apparent fourth violation of Rule 25-4.0161, F.A.C., our staff was required to address with this Commission the fourth violation for our consideration and further action.

We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.336, and 364.285, F.S.

Decision

This Commission has opened three prior dockets, in 2006, 2007, and 2009, to address the same rule violation by A.SUR Net. In all three dockets, the Company's failure to pay past due RAFs by the delinquency notice deadlines resulted in the Company paying not only the delinquent RAFs, but also the statutory late payment penalties and interest amounts, and additional penalties per Rule 25-4.0161(12), F.A.C.

Due to the failure to timely pay the past due RAFs, A.SUR Net paid additional rule penalties of \$500 in 2006, \$1,000 in 2007, and \$2,000 in 2009, along with all RAF amounts, statutory penalties, and interest charges.

In the case of A.SUR Net's failure to pay its 2019 RAF, our staff reached out by phone to the Company on February 13, 2020, and on May 12, 2020. On each occasion, the Company was unresponsive. Additionally, our staff emailed the Company on May 13, 2020, and as of the date of this Order, the Company has not responded.

For a company's fourth-time failure to pay the RAF, Rule 25-4.0161(13), F.A.C., provides that our staff shall address this violation with this Commission for our consideration and further action. Pursuant to this rule, we have authority, and also discretion, to either cancel

the company's certificate, or waive the cancellation, if a penalty, plus the outstanding RAF, including accrued statutory late payment charges, are paid in full. While the Company has had three prior violations of this Rule, the most recent violation for RAF non-compliance occurred over 10 years ago, in Docket No. 20090222-TA.

Considering that the Company has paid the outstanding RAFs and penalties three times previously (2006, 2007, and 2009), as well as taking into account the extended amount of time that has elapsed since its last RAF rule violation (11 years), we find that if the Company pays the outstanding 2019 RAFs, including accrued statutory late payment charges, along with an appropriate penalty, A.SUR Net's certificate shall not be cancelled.

Rule 25-4.0161, F.A.C., does not specify a penalty amount for a fourth rule violation. As stated earlier, the rule prescribes a penalty of \$500, \$1,000, or \$2,000, depending on the number of previous violations (i.e. dockets opened due to a company's failure to pay). We note that the penalty amount per the rule doubles each time a subsequent RAF rule violation occurs up to three violations. Since this is the Company's fourth RAF rule violation, we hereby find \$4,000 to be an appropriate penalty, which equates to a doubling of the \$2,000 penalty amount for a third RAF rule violation.¹ Pursuant to Section 364.285, F.S., we have authority to penalize up to \$25,000.

We have calculated a total amount due based on the above. Pursuant to Section 350.113(4), F.S., 5 percent of the 2019 RAF amount due is imposed as a penalty for each 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent.² Additionally, an interest rate of 12 percent per annum is also applied to any delinquent amounts. Thus, as of May 28, 2020, the Company owes an estimated 2019 RAF amount of \$2,217.45, plus a late penalty in the amount of \$443.48 (5 percent x 4 months x \$2,217.45), plus accrued interest in the amount of \$88.68, which results in a total amount due of \$2,749.61.³ This amount, added to the fourth violation penalty amount of \$4,000, including cost of collections, results in a total amount due to this Commission of \$6,749.61.

It is relevant to this docket to note that, pursuant to Rule 25-4.0161(14), F.A.C., if a company reapplies for a certificate, the company must pay all prior unpaid regulatory assessment fees, plus the penalty and interest, and any prior unpaid penalty assessed in accordance with subsection (11).

Therefore, we hereby order A.SUR Net to pay the outstanding RAF, including accrued statutory late payment charges, along with the \$4,000 penalty in full, for a total of \$6,749.61, within 21 days of the issuance of the Proposed Agency Action Order. Furthermore, if the

¹ Order No. PSC-08-0796-PAA-TI, issued on December 3, 2008, in Docket No. 20080349-TI, *In re: Compliance investigation of LXC Registration No. TJ008, issued to Executive Business Centers, Inc., for apparent fourth-time violation of Section 364.336, F.S. and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.*

² Section 350.113(4), F.S., provides a prorated penalty amount for the first month of delinquency; however, this provision has no effect on this case since the delinquency period has been longer than one month.

³ We note that the 2019 RAF amount is based on the Company's 2018 annual revenues.

Company fails to pay this amount by that date, we hereby grant our staff administrative authority to cancel the Company's AAV tariff and registration and remove it from the register.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that A.SUR Net, Inc. shall pay the outstanding Regulatory Assessment Fees, including accrued statutory late payment charges, along with the \$4,000 penalty in full, for a total of \$6,749.61, within 21 days of the issuance of the Proposed Agency Action Order. It is further

ORDERED that if A.SUR Net, Inc. fails to pay the penalty and cost of collection, and Regulatory Assessment Fee, including statutory late payment charges, in full, prior to the expiration of the Proposed Agency Action Order, then A.SUR Net, Inc.'s alternative access vendor tariff shall be cancelled administratively, its name removed from the register, and the collection of the past due Regulatory Assessment Fee, including any accrued statutory late payment charges, shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

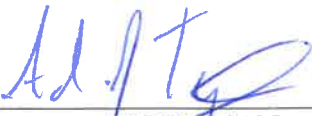
ORDERED that if A.SUR Net, Inc.'s alternative access vendor tariff is cancelled and its name removed from the register in accordance with this Order, A.SUR Net, Inc. shall be required to immediately cease and desist providing alternative access telecommunications service in Florida. It is further

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 Commission Clerk, 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 if A.SUR Net, Inc. fails to timely file a protest and to request a Section 120.57, F.S., hearing, the facts should be deemed admitted and the right to a hearing waived. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open.

By ORDER of the Florida Public Service Commission this 24th day of June, 2020.


ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

GAP

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 15, 2020.

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.