

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of  
Alternative Local Exchange  
Telecommunications Certificate  
No. 5678 issued to InternetU,  
Inc. for violation of Rule 25-  
4.0161, F.A.C., Regulatory  
Assessment Fees;  
Telecommunications Companies.

DOCKET NO. 991989-TX

In re: Initiation of show cause  
proceedings against InternetU,  
Inc. for apparent violation of  
Section 364.183(1), F.S., Access  
to Company Records.

DOCKET NO. 000227-TX  
ORDER NO. PSC-01-0670-FOF-TX  
ISSUED: March 19, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER DISMISSING PROTEST, CANCELLING ALEC CERTIFICATE,  
CONSUMMATING ORDER NO. PSC-00-0844-PAA-TX AND  
VACATING ORDER NO. PSC-00-0693-SC-TX

I. Background

On December 1, 1998, InternetU, Inc. (InternetU) was mailed  
its 1998 regulatory assessment fee (RAF) notice. When full payment  
had not been received by the due date, the Division of  
Administration mailed a delinquency notice to the company. On  
December 21, 1999, Docket No. 991989-TX was opened to cancel  
InternetU's Alternative Local Exchange Company (ALEC) certificate,

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REG-RECORDS/REPORTING

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No. 5678, for failure to pay RAFs. On April 28, 2000, Order No. PSC-00-0844-PAA-TX (RAFs Order), proposing to cancel InternetU's ALEC certificate for failure to pay RAFs, was issued in this docket.

On June 25, 1999, InternetU was mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. InternetU did not supply the requested information and on December 1, 1999, a second certified letter, requesting that InternetU respond to the data request no later than December 22, 1999, was mailed. InternetU has not responded.

On February 21, 2000, Docket No. 000227-TX was opened to show cause InternetU for failure to allow Commission access to company records, in violation of Section 364.183(1), Florida Statutes, (Access to Company Records). On April 13, 2000, we issued Order No. PSC-00-0693-SC-TX (Show Cause Order) in Docket No. 000227-TX ordering InternetU to show cause why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Section 364.183(1), F.S.

On May 3, 2000, DURO Communications, Inc. (DURO) responded to the Show Cause Order with a letter explaining the relationship of DURO to InternetU. DURO explained that it acquired assets of digital.net, l.l.c. on March 26, 1999; prior to that digital.net l.l.c. had acquired assets of InternetU. On May 19, 2000, DURO protested the RAFs Order.

On May 30, 2000, our staff met with counsel for DURO to explore whether it had any liability for InternetU. DURO asked that action be delayed on both dockets until the matter was investigated and the impact on DURO clarified.

We are vested with jurisdiction over these matters pursuant to Sections 364.183, 364.285 and 364.336, Florida Statutes.

## II. DURO's Protest of the RAFs Order (Order No. PSC-00-0844-PAA-TX)

We find that DURO lacks standing to protest the proposed agency action in Docket 991989-TX, because the proceeding does not affect DURO's substantial interests. An entity's substantial

interests are affected by a proceeding when the entity will suffer actual and immediate injury as a result of the proceeding, and when the injury is of a type or nature that the proceeding is designed to protect. See Agrico Chemical Co. V. Dep't of Environmental Protection, 406 So. 2d 478, 482 (Fla 2d DCA 1981). Since DURO did not acquire the certificate proposed to be cancelled by the RAFs Order, DURO will not suffer any injury.

Specifically, DURO acquired the assets of InternetU and most of InternetU's transferable licenses and permits through a series of acquisitions, including the acquisition of digital.net, l.l.c. However, DURO did not obtain or have transferred InternetU's ALEC certificate, nor did digital.net, l.l.c. Because DURO has no ownership interest in InternetU's ALEC certificate, it will not be harmed by cancellation of the certificate and, therefore, has no standing in this proceeding. Therefore DURO's protest is hereby dismissed.

III. Cancellation of InternetU's ALEC certificate for failure to pay RAFs

InternetU did not remit its RAFs with penalty and interest, it did not remit the fine imposed, and it did not respond in any manner to PAA Order No. PSC-00-0844-PAA-TX. The only response to the Order, a protest, came from DURO. Therefore, in accordance with the Order, ALEC certificate number 5678 shall be canceled. The effective date of the cancellation shall be May 19, 2000, as originally set forth in Order No. PSC-00-0844-PAA-TX.

IV. The Show Cause Order (Order No. PSC-00-0693-SC-TX)

InternetU, Inc. was ordered to show cause why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes. DURO, through a series of corporate acquisitions, obtained the rights to the trademark "InternetU." DURO filed a response to the show cause order explaining that the acquisition contract indicates that DURO acquired assets of InternetU but did not acquire its ALEC certificate. Given that the ultimate penalty in the Show Cause Order was cancellation of its ALEC certificate, and given that the RAFs Order required that the ALEC certificate be cancelled for

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failure to pay RAFs, Order No. PSC-00-0693-SC-TX is rendered moot. Therefore, Order No. PSC-00-0693-SC-TX shall be vacated.

Based on the foregoing, it is

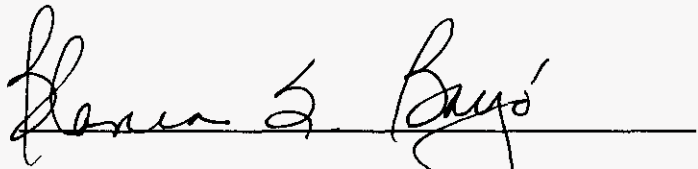
ORDERED by the Florida Public Service Commission that DURO Communications, Inc.'s protest of Order No. PSC-00-0844-PAA-TX is dismissed for lack of standing, and Order No. PSC-00-0844-PAA-TX is hereby reinstated and consummated. It is further

ORDERED that in accordance with Order NO. PSC-00-0844-PAA-TX, ALEC Certificate No. 5678 shall be cancelled, effective May 19, 2000. It is further

ORDERED that Order No. PSC-00-0693-SC-TX shall be vacated. It is further

ORDERED that Docket No. 991989-TX and Docket No. 000227-TX shall be closed.

By ORDER of the Florida Public Service Commission this 19th day of March, 2001.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.