

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of cancelled
STS Certificate No. 8631, issued to Biopass
Medical Systems, Incorporated d/b/a DSL
Express, for second-time violation of Rule 25-
4.0161, F.A.C., Regulatory Assessment Fees;
Telecommunications Companies.

DOCKET NO. 130111-TS
ORDER NO. PSC-13-0237-PAA-TS
ISSUED: May 31, 2013

NOTICE OF PROPOSED AGENCY ACTION ORDER IMPOSING PENALTIES AND
COLLECTION COSTS AND REQUIRING PAYMENT OF DELINQUENT REGULATORY
ASSESSMENT FEES FOR VIOLATION OF SECTION 364.336, FLORIDA STATUTES,
AND 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 (F.A.C.).

Pursuant to Rule 25-4.0161(12), F.A.C., telecommunications companies that fail to pay the Regulatory Assessment Fee (RAF), 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.

Pursuant to Section 364.336, Florida Statutes (F.S.), telecommunication service providers must pay a minimum annual RAF if the entity was licensed or active during any portion of the calendar year. Pursuant to Rule 25-4.0161(3), F.A.C., the form and applicable fees are due to the Florida Public Service Commission by January 30th of the subsequent year.

Pursuant to Section 350.113(4), F.S., the applicable RAF 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.

The Division of Administrative and Information Technology Services advised that the entity below failed to comply with Section 364.336, F.S., and Rule 25-4.0161, F.A.C. In addition, the entity listed below has had one prior docket for the same rule violation in which the company did not pay the 2011 RAF, statutory late payment charges or rule penalty imposed to resolve its respective docket and its certificate was cancelled effective August 13, 2012, in Consummating Order No. PSC-12-0409-CO-TS. In addition, the entity listed herein has not paid the 2012 RAF.

DOCUMENT NUMBER-DATE

03006 MAY 31 2013

FPSC-COMMISSION CLERK

| <u>ENTITY'S NAME</u> | <u>CO. CODE</u> | <u>DOCKET NO.</u> |
|--|-----------------|-------------------|
| Biopass Medical Systems, Incorporated d/b/a DSL Express | TS210 | 130111-TS |

We are vested with jurisdiction over these matters pursuant to Chapters 350 and 364, Florida Statutes.

Accordingly, we hereby find it appropriate to refer this entity to the Florida Department of Financial Services for further collection efforts for failure to comply with Section 364.336, F.S., and Rule 25-4.0161, F.A.C., unless this entity pays a penalty and cost of collection, together totaling \$1,000, and remits the past due RAF, past due rule penalty imposed, along with any accrued statutory late payment charges, to the Florida Public Service Commission.

If this Order is not protested, the entity will be referred to the Florida Department of Financial Services for further collection efforts.

If the entity pays the penalty and cost of collection, together totaling \$1,000, and remits any past due RAF, past due penalty imposed, along with any accrued statutory late payment charges, prior to the expiration of this Proposed Agency Action Order, then the entity shall not be referred to the Florida Department of Financial Services for further collection efforts for failure to comply with Section 364.336, F.S. and Rule 25-4.0161, F.A.C. If an entity fails to protest the Order or pay the penalty and cost of collection, together totaling \$1,000, and fails to remit any past due RAF, past due penalty imposed, along with any accrued statutory late payment charges, prior to the expiration of this Proposed Agency Action Order, then that entity shall be referred to the Florida Department of Financial Services for further collection efforts.

The docket shall be closed administratively either upon receipt of the payment of the penalty and cost of collection, together totaling \$1,000, and any past due RAF, past due penalty, along with any accrued statutory late payment charges, or upon being referred to the Florida Department of Financial Services for further collection efforts.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the entity listed herein shall pay a penalty and cost of collection, together totaling \$1,000, and any past due RAF, including any past due penalty, and statutory late payment charges, to the Florida Public Service Commission for failure to comply with Section 364.336, F.S., and Rule 25-4.0161, F.A.C., by the end of the protest period. It is further

ORDERED that the cost of collection will be subtracted from any monies collected as payments (full or partial) of the penalty, and will be deposited, along with any past due RAF, in the Florida Public Service Commission Regulatory Trust Fund, pursuant to Section 350.113, F.S. 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), F.S. It is further

ORDERED that should the entity fail to comply with this Order, that the entity's unpaid RAF, 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 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, F.A.C., is received by the Office of 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 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 any RAF, including statutory late payment charges, from the entity or upon referring the entity to the Florida Department of Financial Services for further collection efforts.

By ORDER of the Florida Public Service Commission this 31st day of May, 2013.



ANN COLE
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.

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 June 21, 2013.

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 docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.