

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 28, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Kunkler) *JH*
Office of the General Counsel (Passidomo, Dziechciarz) *LT*

RE: Docket No. 20200141-TA – 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.

AGENDA: 06/09/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

A.SUR Net, Inc. (A.SUR Net or the Company) is a regulated telecommunications company located in North Miami Beach, Florida. The Company's application for an alternative access vendor (AAV) certificate was approved by the Commission 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 the Commission by January 30 of the subsequent year.

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In keeping with Commission 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 recommendation, the Commission has not received payment from A.SUR Net.

On February 20, 2020, the Commission mailed a letter to the Company informing them that, according to Commission records, their 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., by the Company, staff is required to file a recommendation addressing the fourth violation for the Commission's consideration and further action.

The Commission has jurisdiction over this matter pursuant to Sections 350.113, 364.336, and 364.285, F.S.

Discussion of Issues

Issue 1: Should the Commission impose a penalty and a cost of collection, together totaling \$4,000, or cancel the A.SUR Net, Inc. tariff and remove A.SUR Net, Inc., TA057, from the register for an apparent fourth violation of Section 364.336, F.S., and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies?

Recommendation: A.SUR Net, Inc. should pay a penalty and the cost of collection, together totaling \$4,000, as well as remit any unpaid Regulatory Assessment Fees, along with accrued statutory late payment charges, or have its AAV tariff cancelled and its name removed from the register. (Kunkler, Dziechciarz, Passidomo)

Staff Analysis: The Commission has opened three prior dockets, in 2006, 2007, and 2009, to address the same rule violation by A.SUR Net, Inc. 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, Inc. 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, Inc.'s failure to pay its 2019 RAF, 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, staff emailed the Company on May 13, 2020, and as of the date of this recommendation, 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 staff shall file a recommendation for the Commission's consideration and further action. Pursuant to this rule, the Commission has 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), staff believes that if the Company pays the outstanding 2019 RAFs, including accrued statutory late payment charges, along with an appropriate penalty, A.SUR Net Inc.'s certificate should 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 utility's failure to pay). Staff notes 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, staff believes an

appropriate penalty is \$4,000, 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., the Commission has authority to penalize up to \$25,000.

Staff has 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 staff-proposed fourth violation penalty amount of \$4,000, including cost of collections, results in a total amount due to the 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, staff recommends it is appropriate for the Commission to require A.SUR Net, Inc. 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, staff recommends it is appropriate that, if the Company fails to pay this amount by that date, the Company's AAV tariff and registration should be cancelled and removed from the register; in which case, staff requests administrative authority to cancel the Company's AAV tariff and certificate.

¹Order No. PSC-08-0796-PAA-TI, issued on December 3, 2008, in Docket No. 20080349-TI, *In re: Compliance investigation of IXC 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.*

²Section 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.

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

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, F.A.C., within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), F.S., any issues not in dispute should be deemed stipulated. If the Company 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. If the Company 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 the Company's AAV tariff should be cancelled administratively and its name removed from the register, and the collection of the past due Regulatory Assessment Fee, including any accrued statutory late payment charges, should be referred to the Florida Department of Financial Services for further collection efforts. If the Company's AAV tariff is cancelled and its name removed from the register in accordance with the Commission's Order from this recommendation, the Company should be required to immediately cease and desist providing alternative access telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the penalty and cost of collection, and Regulatory Assessment Fee, including accrued statutory late payment charges, or upon cancellation of the Company's AAV tariff and removal of its name from the register. (Passidomo, Dziechciarz)

Staff Analysis: Staff recommends that the Commission take action as set forth in the foregoing staff recommendation statement.