

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Decertification of)
Epinnacle Communications, Inc.) DOCKET NO. 07-2433-01
) REPORT AND ORDER CANCELING
) CERTIFICATE
)

ISSUED: February 11, 2008

SYNOPSIS

Epinnacle Communications, Inc (“Epinnacle”) having failed to appear and show cause why Epinnacle has failed to pay its Public Utilities Regulation Fee (“PURF”) for calendar year 2006 and further to show cause why Epinnacle should not be fined and have its Certificate of Public Convenience and Necessity cancelled for its failure to pay the PURF, and no detriment to the public interest appearing, the Commission cancelled the certificate.

By The Commission:

On December 7, 2007, the Division of Public Utilities (“Division”) filed a memorandum recommending the Public Service Commission of Utah (“Commission”) cancel the Certificate of Public Convenience and Necessity (“Certificate”) held by Epinnacle Communications, Inc. (“Company”) for failure to pay its Public Utilities Regulation Fee (“PURF”) for calendar year 2006.

The Division requested the Commission issue to the Company an Order to Show Cause why the Company should not be fined or its Certificate suspended or revoked for its failure to pay the PURF. In support of its recommendation, the Division stated the following:

On October 20, 2004, Epinnacle [sic] was issued a Certificate of Public Convenience and Necessity by the Commission in Docket No. 04-2433-01. This authorized the Company to “provide specified public telecommunications services within a defined geographic service territory in the state.”

The Company has not paid its public utility regulation fee for the year 2006. The Division has sent a number of letters, emails and

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telephoned Mr. Brian T. Kofford , the registered agent for the Company, concerning their delinquency. The Division mailed the Public Utilities Regulation Fee assessment to the Company on June 4, 2007. Payment was due on or before July 1, 2007. No payment was received by the due date, so a reminder letter from the Attorney General was sent to the Company on July 13, 2007. The Public Utilities Regulation Fee due on or before July 1, 2007, based on revenues earned during the year ended December 31, 2006, has not been paid.

All letters and notices were mailed to the last known address that the Company provided to the Commission. These letters have been unanswered or returned and unable to be forwarded.

On January 2, 2008, the Commission issued the requested Order to Show Cause ordering the Company within thirty days from the date of said Order to show cause, if any, why the Company has failed to pay its PURF for calendar year 2006, and further show cause why the Company should not be fined, its Certificate cancelled, or other remedies imposed on the Company and its named officers.

To date, the Company has failed to respond to the Commission's Order to Show Cause.

Utah Code Ann. Section 54-5-1.5(1)(a) provides “[a] special fee to defray the cost of regulation is imposed upon all public utilities subject to the jurisdiction of the Public Service Commission.” Section 54-5-1.5(3)(b) continues “[t]he fee is due and payable on or before July 1 of each year.” Finally, Section 54-5-3(2)(b) states the Public Service Commission “may immediately enter an order suspending the operating rights of the utility” if a utility defaults on payment of the PURF. Pursuant to *Utah Code Ann.* Section 54-7-25, the Commission may also impose a fine of up to \$2,000 per day.

As the Company has failed to respond or offer any evidence in its behalf, and likewise has thus far failed to pay its PURF for calendar year 2006, the Division has made out its *prima facie* case in support of canceling the Company's Certificate and there appears no reason to convene an evidentiary hearing on the matter. Accordingly, the Commission concludes it is in the public interest to convert this matter to an informal proceeding, pursuant to Section 63-46b-4(3), UCA 1953, as amended. The Commission further finds and concludes the Company has failed to pay its calendar year 2006 PURF in violation of *Utah Code Ann.* Section 54-5-1.5 and therefore determines cancellation of the Company's Certificate to be in the public interest.

Whereas based on the foregoing and for good cause appearing, the Commission enters the following

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
2. The Certificate of Public Convenience and Necessity issued October 20, 2004, in Docket No. 04-2433-01 to Epinnacle Communications, Inc., be, and it is, tentatively cancelled and annulled.
3. Absent meritorious protest, this Order shall automatically become effective without further action twenty (20) days from the date of this Order.

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4. Persons desiring to protest this Order may file said protest prior to the effective date of this Order. If the Commission finds said protest to be meritorious, the effective date shall be suspended pending further proceedings.

Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 11th day of February, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#56255