

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation  
by Florida Public Service  
Commission of IXC Certificate  
No. 4768 issued to Telscape USA,  
Inc. and ALEC Certificate No.  
6097 issued to PointeCom,  
Incorporated d/b/a Telscape  
Communications, effective  
8/01/02.

DOCKET NO. 020893-TP  
ORDER NO. PSC-02-1522-PAA-TP  
ISSUED: November 6, 2002

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING CANCELLATION OF ALTERNATIVE LOCAL EXCHANGE (ALEC)  
TELEPHONE CERTIFICATE AND INTEREXCHANGE (IXC) TELEPHONE  
CERTIFICATE DUE TO CHAPTER 11 BANKRUPTCY

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.

Telscape USA, Inc. (Telscape) currently holds Certificate of  
Public Convenience and Necessity No. 4768, issued by the Commission  
on February 18, 1997, authorizing the provision of Interexchange  
(IXC) Telephone service. The Company also holds Certificate of  
Public Convenience and Necessity No. 6097 under the name of  
PointeCom, Incorporated d/b/a Telscape Communications, authorizing  
the provision of Alternative Local Exchange (ALEC) Telephone

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service. The ALEC certificate was issued by the Commission on May 24, 1999. The Division of the Commission Clerk and Administrative Services advised our staff that accrued statutory penalties and interest charges for late RAFs payments on the IXC certificate, for the year 1997, had not been paid.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing Alternative Local Exchange Telephone (ALEC) and Interexchange Telephone (IXC) services.

We received notice that this company had filed for Chapter 11 bankruptcy protection. In addition, we received a letter from the company requesting cancellation of its certificates and asking that any unpaid Regulatory Assessment Fees be written off as no funds exist.

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority seeking to collect a debt. However, in this case, the company has requested cancellation of its certificate. Under those circumstances, this Commission is free to do so. We note that the Division of the Commission Clerk and Administrative Services will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested.

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Accordingly, we find it appropriate to cancel Alternative Local Exchange Telephone (ALEC) and Interexchange Telephone (IXC) Certificate Nos. 4768 (IXC) and 6097 (ALEC), effective August 1, 2002. If Telscape's certificates are canceled in accordance with this Order, Telscape shall immediately cease and desist providing Alternative Local Exchange Telephone (ALEC) and Interexchange Telephone (IXC) services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.335, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Telscape USA, Inc.'s Certificate No. 4768 to provide Interexchange (IXC) Telephone service and PointeCom, Incorporated d/b/a Telscape Communications' Certificate No. 6097 to provide Alternative Local Exchange (ALEC) Telephone service services is hereby canceled, effective August 1, 2002. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Comptroller's Office for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request for permission to write-off the uncollectible amount. It is further

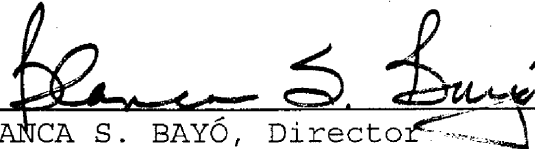
ORDERED that if Telscape USA, Inc.'s Certificate No. 4768 and PointeCom, Incorporated d/b/a Telscape Communications' Certificate No. 6097 are canceled in accordance with this Order, these entities shall immediately cease and desist providing Alternative Local Exchange (ALEC) and Interexchange Telephone (IXC) services 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 Director, Division of the Commission Clerk and Administrative Services, 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

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ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 6th Day of November, 2002.



BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

LHD

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.

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 27, 2002.

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.