

State of Florida



Public Service Commission

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COMMISSION
CLERK

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RECEIVED-FPSC

DATE: NOVEMBER 19, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *DJE*
DIVISION OF LEGAL SERVICES (J. ELLIOTT) *JAE*

RE: DOCKET NO. 011304-TX - CANCELLATION BY FLORIDA PUBLIC
SERVICE COMMISSION OF ALTERNATIVE LOCAL EXCHANGE
TELECOMMUNICATIONS CERTIFICATE NO. 7506 ISSUED TO EVULKAN,
INC. D/B/A BEMANY! FOR VIOLATION OF RULE 25-4.0161,
F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS
COMPANIES.

AGENDA: 12/04/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011304.RCM

CASE BACKGROUND

- 09/01/00 - This company obtained Florida Public Service Commission Certificate No. 7506.
- 12/12/00 - The Division of the Commission Clerk & Administrative Services mailed the 2000 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2001.
- 02/21/01 - The Division of the Commission Clerk & Administrative Services mailed a delinquent notice for nonpayment of the 2000 RAF.

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- **10/03/01** - Staff wrote the company a letter and explained that a docket had been established for nonpayment of the 2000 RAF and provided the company its options to resolve the docket.
- **10/31/01** - The Commission received a letter from the company's former president, Mr. George Jankovic. Mr. Jankovic requested cancellation of the company's certificate and asked staff to contact its attorney with any questions or concerns.
- **11/02/01** - Staff e-mailed the company's attorney, Mr. Richard Stubbs, and explained that in order to recommend a voluntary cancellation, the company must pay the 2000 RAF and either pay the 2001 RAF or provide a date certain it would be paid.
- **11/05/01** - Mr. Stubbs responded via e-mail and advised that the company had never provided service, had no revenues, and no longer existed. Mr. Stubbs requested that the Commission write-off any fees associated with this company.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant eVulkan, Inc. d/b/a beMANY! a voluntary cancellation of Certificate No. 7506?

RECOMMENDATION: No. The Commission should cancel eVulkan, Inc. d/b/a beMANY!'s certificate on its own motion with an effective date of October 29, 2001. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2000 and 2001 RAFs, including statutory penalty and interest charges for the year 2000, 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. (Isler; J. Elliott)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of the Commission Clerk & Administrative Services notified staff that eVulkan, Inc. d/b/a beMANY! had not submitted the 2000 regulatory assessment fees, along with statutory penalty and interest charges, for the year 2000. Therefore, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

Staff wrote eVulkan, Inc. d/b/a beMANY! and explained that a docket had been established. Staff advised the company to contact staff if they were interested in resolving the dockets. On October 3, 2001, staff wrote the company and explained that a docket had been established for nonpayment of the 2000 RAF, plus statutory penalty and interest charges. Staff asked the company to contact staff if it was interested in resolving the docket. On October 31, 2001, the Commission received a letter from the company's former president, Mr. George Jankovic, which requested cancellation of its certificate. Staff e-mailed the company's attorney, Mr. Richard Stubbs, who responded via e-mail. Mr. Stubbs stated that this company had never provided service, therefore, had no revenues to report. In addition, Mr. Stubbs advised that the company no longer existed and requested that the RAFs be written-off. Staff checked the Florida Department of State, Division of Corporations' records

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and confirmed that the corporation no longer exists. Under the circumstances, staff believes that it is appropriate to write-off the RAFs rather than send the uncollectible amounts to the Comptroller's Office for further collection attempts.

Accordingly, staff believes the Commission should cancel eVulkan, Inc. d/b/a beMANY!'s certificate on its own motion with an effective date of October 29, 2001. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2000 and 2001 RAFs, including statutory penalty and interest charges for the year 2000, 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.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This docket should then be closed upon cancellation of the certificate. (J. Elliott)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon cancellation of the certificate.