

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 011304-TX
ORDER NO. PSC-01-2418-PAA-TX
ISSUED: December 12, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELING ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS
CERTIFICATE INVOLUNTARILY

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.

eVulkan, Inc. d/b/a beMANY! (BeMANY!) currently holds
Certificate of Public Convenience and Necessity No. 7506, issued by
the Commission on September 1, 2000, authorizing the provision of
Alternative Local Exchange Telecommunications service. The
Division of the Commission Clerk and Administrative Services
advised our staff that beMANY! had not paid the Regulatory
Assessment Fees (RAFs) required by Section 364.336, Florida

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Statutes, and Rule 25-4.0161, Florida Administrative Code, for the year 2000. Also, accrued statutory penalties and interest charges for late RAFs payments for the year 2000 had not been paid. beMANY! was scheduled to remit its RAFs by January 30, 2001.

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. Pursuant to Section 350.113(4), Florida Statutes, the RAFs 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. All entities that apply for certification receive a copy of our rules governing Alternative Local Exchange Telecommunications service.

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

beMANY! has not complied with Rule 25-24.820(2), Florida Administrative Code, which states:

(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following with its request. Cancellation of a certificate shall be ordered subject to the holder providing the required information.

- (a) A statement of intent and date certain to pay regulatory assessment fee.
- (b) A statement of why the certificate is proposed to be cancelled.
- (c) A statement as to how customer deposits and final bills will be handled.
- (d) Proof of individual customer notice regarding discontinuance of service.

Accordingly, since the company's certificate remains active until it requests a voluntary cancellation pursuant to Rule 25-24.820(2), Florida Administrative Code, or we involuntarily cancel the certificate, beMANY! is responsible for the RAFs. As of the date of the vote, beMANY! continues to be in violation of our rules for nonpayment of RAFs for the year 2000.

For the reasons described above, pursuant to Rule 25-24.820(1)(b) and (c), Florida Administrative Code, we deny beMANY!'s request for voluntary cancellation of Alternative Local Exchange Telecommunications Certificate No. 7506 for failure to comply with the provisions of Rule 25-24.820(2), Florida Administrative Code. However, we find it appropriate to involuntarily cancel beMANY!'s certificate, effective October 21, 2001, for failure to pay RAFs pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. Since beMANY! is no longer in business, there would be no purpose in requiring beMANY! to pay a fine. By involuntarily canceling beMANY!'s certificate, however, we would be able to track this company should it apply for another certificate with us in the future. We are vested with jurisdiction over this matter pursuant to Sections 364.336 and 364.285, Florida Statutes. Further, 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.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that we hereby deny eVulkan, Inc. d/b/a beMANY!'s request for voluntary cancellation of Alternative Local Exchange Telecommunications Certificate No. 7506. It is further

ORDERED that pursuant to Rule 25-24.820(1)(b) and (c), Florida Administrative Code, we hereby cancel eVulkan, Inc. d/b/a beMANY!'s Alternative Local Exchange Telecommunications Certificate No. 7506, effective October 29, 2001, for failure to comply with Rule 25-24.820(2), Florida Administrative Code; Section 364.336, Florida Statutes; and Rule 25-4.0161, Florida Administrative Code. It is further

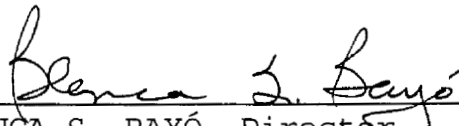
ORDERED that the 2000 and 2001 Regulatory Assessment Fees, including statutory penalty and interest charges for the year 2000, should not be sent to the Comptroller's Office for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request for permission to write-off the uncollectible amount. It is further

ORDERED that 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

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

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By ORDER of the Florida Public Service Commission this 12th
Day of December, 2001.



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

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 2, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order. .

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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.