



Public Service Commission
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COMMISSION
CLERK

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DATE: SEPTEMBER 19, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *Pji*
OFFICE OF THE GENERAL COUNSEL (DODSON) *LA BJC*

RE: DOCKET NO. 020604-TX - BANKRUPTCY CANCELLATION BY FLORIDA
PUBLIC SERVICE COMMISSION FOR ALEC CERTIFICATE NO. 7681
ISSUED TO SPHERA OPTICAL NETWORKS N.A., INC. D/B/A SPHERA
NETWORKS EFFECTIVE 8/6/02.

AGENDA: 10/01/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020604.RCM

CASE BACKGROUND

- 01/17/01 - This company obtained Florida Public Service Commission Certificate No. 7681.
- 12/12/01 - The Division of the Commission Clerk & Administrative Services mailed the 2001 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2002.
- 02/21/02 - The Office of the General Counsel mailed via certified mail a delinquent notice. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered.
- 05/06/02 - Staff wrote the company and explained that the 2001 RAF, plus penalty and interest charges, had not been paid and

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requested payment by May 28, 2002 to avoid a docket from being established.

- **06/28/02** - The Commission received a letter from the company's attorney, which requested cancellation of the company's certificate and advised that the company had filed for Chapter 11 bankruptcy protection.
- **07/11/02** - Staff called the company's attorney and asked for a copy of the bankruptcy notice.
- **08/06/02** - The Commission received a letter from the company's attorney, which advised the company had no customers in Florida and asked that any unpaid RAFs be written-off due to the bankruptcy proceedings. The letter also included a copy of the bankruptcy notice.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Sphera Optical Networks N.A., Inc. d/b/a Sphera Networks' request for cancellation of its ALEC Certificate No. 7681 due to bankruptcy?

RECOMMENDATION: Yes. The Commission should grant the company a bankruptcy cancellation of its ALEC Certificate No. 7681 with an effective date of August 6, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001 and 2002 RAFs, including statutory penalty and interest charges for the year 2001, 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. If the certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing alternative local exchange services in Florida. (Isler; Dodson)

STAFF ANALYSIS: Rules 25-24.820, Florida Administrative Code, establishes the requirements for cancellation of certificates. However, 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.

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.

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The Division of the Commission Clerk & Administrative Services' records showed that the company had not paid its 2001 regulatory assessment fee, plus statutory penalty and interest charges; therefore, staff wrote the company and explained that if full payment was not received, a docket would be established for nonpayment of the RAF. No response was received; therefore, this docket was established on June 27, 2002. The next day, June 28, the Commission received a letter from Ms. Kathleen L. Greenan, Attorney for the company. The letter requested cancellation of the company's certificate and advised that the company was currently in bankruptcy proceedings.

Staff called Ms. Greenan and explained that the Commission had not received notice of the bankruptcy and asked for a copy of the Chapter 11 bankruptcy notice. On August 6, 2002, the Commission received a follow up letter from Ms. Greenan, which advised the company had no customers in Florida and requested that any unpaid RAFs be written-off due to the Chapter 11 bankruptcy proceedings. In addition, Ms. Greenan provided the Commission with a copy of the bankruptcy notice (Case No. 02-51607).

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its ALEC Certificate No. 7681 with an effective date of August 6, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001 and 2002 RAFs, including statutory penalty and interest charges for the year 2001, 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. If the certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing alternative local exchange services in Florida.

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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. The docket should then be closed.
(Dodson)

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 issuance of a Consummating Order.