

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation
by Florida Public Service
Commission of ALEC Certificate
No. 7681 issued to Sphera
Optical Networks N.A., Inc.
d/b/a Sphera Networks effective
8/6/02.

DOCKET NO. 020604-TX
ORDER NO. PSC-02-1339-PAA-TX
ISSUED: October 2, 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
TELECOMMUNICATIONS SERVICE
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.

Sphera Optical Networks N.A., Inc. d/b/a Sphera Networks
(Sphera) currently holds Certificate of Public Convenience and
Necessity No. 7681, issued by the Commission on January 17, 2001,
authorizing the provision of Alternative Local Exchange (ALEC)
Telecommunications service.

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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 ALEC service.

On December 12, 2001, the Division of the Commission Clerk & Administrative Services mailed the 2001 Regulatory Assessment Fee (RAF) return notice. Payment was due by January 30, 2002. The Office of the General Counsel mailed via certified mail a delinquent notice on February 21, 2002. The US Postal Service returned the certified receipt, which showed the delinquent notice was signed for and delivered. Our staff wrote the company on May 6, 2002 and explained that the 2001 RAF, plus penalty and interest charges, had not been paid and requested payment by May 28, 2002 to avoid a docket from being established. The company's attorney responded on June 28, 2002 requesting cancellation of the company's certificate and advising that the company had filed for Chapter 11 bankruptcy protection. On August 6, 2002, we 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.

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

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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.

Accordingly, we find it appropriate to cancel ALEC Certificate No. 7681, effective August 6, 2002. If Sphera's certificate is canceled in accordance with this Order, Sphera shall immediately cease and desist providing ALEC 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 Sphera Optical Networks N.A., Inc. d/b/a Sphera Networks's Certificate No. 7681 to provide Alternative Local Exchange Telecommunications services is hereby canceled, effective August 6, 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 Sphera Optical Networks N.A., Inc. d/b/a Sphera Networks's Certificate No. 7681 is canceled in accordance with this Order, that entity shall immediately cease and desist providing Alternative Local Exchange Telecommunications 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 2nd Day of October, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
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 October 23, 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.