

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause ) DOCKET NO. 910303-TC  
proceedings against NOAH'S ARK ) ORDER NO. 25113  
for violation of Rule 25-24.520, ) ISSUED: 9/24/91  
Annual Report Requirement. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
MICHAEL MCK. WILSON

FINAL ORDER RESOLVING  
SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Noah's Ark (Noah's Ark or the Company) has been a certificated pay telephone service (PATS) provider since February 12, 1987. As a certificated PATS provider, Noah's Ark is subject to our jurisdiction.

On May 13, 1991, we issued Order No. 24519 requiring Noah's Ark to show cause why it should not be fined \$250 for failure to file an Annual Report for 1991 as required by Rule 25-24.520, Florida Administrative Code. Order No. 24519 also provided that if Noah's Ark elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24519 provided that if Noah's Ark failed to file a timely response, its certificate would be canceled and this docket closed.

On April 20, 1991, shortly before this docket first went to agenda, Noah's Ark filed a 1990 Annual Report. On May 16, 1991, Noah's Ark filed a response to Order No. 24519. In its response, Noah's Ark indicated that it was not aware of the Annual Report Requirement. Beyond its lack of awareness and its late-filed, Noah's Ark offered no reason for its failure to file the Annual Report in a timely manner.

We have often ruled that certificated PATS providers have notice of the various obligations associated with PATS authority. Completion of the certificate application provides notice of the various rules regulating PATS providers, including Rule 25-24.520.

DOCUMENT NUMBER-DATE  
09473 SEP 24 1991  
FPSC-RECORDS/REPORTING

ORDER NO. 25113  
DOCKET NO. 910303-TC  
PAGE 2

We further note that timeliness is an essential element of Rule 25-24.520. A late-filed Annual Report, while commendable and necessary, does not remedy the violation.

Noah's Ark has failed to make any legal or factual argument sufficient to rebut the allegations set forth in Order No. 24519. Noah's Ark's response is effectively an admission of the allegations, a default, and a waiver of the right to a hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Noah's Ark shall, within 30 days, pay the \$250 fine proposed in Order No. 24519 or, in the alternative, voluntarily cancel its Certificate of Public Convenience and Necessity No. 1440. It is further

ORDERED that if Noah's Ark elects to voluntarily cancel its certificate, the \$250 fine shall not be imposed, but the Company shall still be liable for the 1991 Regulatory Assessment Fee. It is further

ORDERED that if Noah's Ark fails to respond to this Order, its Certificate of Public Convenience and Necessity No. 1440 shall be canceled and this docket closed.

By ORDER of the Florida Public Service Commission, this 24th day of SEPTEMBER, 1991.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JKA

ORDER NO. 25113  
DOCKET NO. 910303-TC  
PAGE 3

**NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW**

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

**MEMORANDUM**

September 19, 1991

TO : DIVISION OF RECORDS AND REPORTING  
FROM : DIVISION OF LEGAL SERVICES (ADAMS)  
RE : DOCKET NO. 910303-TC

*JKA*  
*SS*

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*25113*  
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Attached is a FINAL ORDER RESOLVING SHOW CAUSE PROCEEDINGS in the above-referenced docket, which is ready to be issued.

JKA/ttl  
Attachment  
cc: Division of Communications

910303a.ttl

DOCUMENT NUMBER-DATE  
09473 SEP 24 1991  
FPSC-RECORDS/REPORTING