

Talbott : *WL*
Vandiver: *Z*

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

October 23, 1997

RECEIVED

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9:45

FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB*
DIVISION OF ADMINISTRATION (LAKE) *901*
DIVISION OF LEGAL SERVICES (COX) *MCB*

RE: DOCKET NO. 971244-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 1550 ISSUED TO LA NUEVA ESTRELLA RESTAURANT, INC. FOR VIOLATION OF RULE 25-4.0161, FLORIDA ADMINISTRATIVE CODE, REGULATORY ASSESSMENT FEES AND RULE 25-24.520, FLORIDA ADMINISTRATIVE CODE, REPORTING REQUIREMENTS

AGENDA: 11/04/97 REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:PSC/CMU/WP/971244TC.RCM

CASE BACKGROUND

- La Nueva Estrella Restaurant, Inc. (La Nueva) obtained Florida Public Service Commission Pay Telephone certificate number 1550 on April 25, 1987.
- On June 3, 1997, the Division of Administration mailed a certified letter to the address listed in the Master Commission Directory informing La Nueva that it was delinquent on its regulatory assessment fees for the year 1996. The letter was signed for and received, but to date, no response has been received (Attachment A, Page 5).
- In addition, on October 2, 1997, a letter sent to La Nueva from the Division of Records and Reporting was returned by the United States Postal Service stamped "Forwarding Order Expired" (Attachment B, Page 6).

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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- As of October 6, 1997, the delinquent regulatory assessment fees for 1996, along with statutory penalties and interest charges, as well as the updated mailing and liaison information have not been submitted by La Nueva.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$500 fine or cancel La Nueva's Pay Telephone Certificate No. 1550 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel the company's certificate if the fine and the regulatory assessment fees, including statutory penalties and interest, are not received by the Commission within 5 business days after the conclusion of the 21 day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and the regulatory assessment fees, including statutory penalties and interest, are not received, certificate number 1550 should be canceled. (Biegalski)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, 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.

On October 6, 1997, staff learned that La Nueva had not submitted the regulatory assessment fees for the year 1996, along with statutory penalties and interest charges. Therefore, the company has failed to comply with Rule 25-4.0161, Florida Administrative Code.

Accordingly, staff recommends that the Commission assess a \$500 fine for failure to comply with Commission rules or cancel certificate number 1550 if the fine and the regulatory assessment fees, along with statutory penalties and interest, are not paid within the specified time.

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ISSUE 2: Should the Commission impose a \$500 fine or cancel La Nueva's Pay Telephone Certificate No. 1550 for apparent violation of Rule 25-24.520, Florida Administrative Code, Reporting Requirements?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel the company's certificate if the fine and information required by Rule 25-24.520, Florida Administrative Code, are not received by the Commission within 5 business days after the conclusion of the 21 day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the required information and fine are not received, certificate number 1550 should be canceled. (Biegalski)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-24.514, Florida Administrative Code, establishes the requirements for cancellation of a pay telephone certificate. The rule provides for the Commission to cancel a certificate on its own motion for violation of Commission Rules and Orders.

Pursuant to Rule 25-24.520, Florida Administrative Code, each company is allowed 10 days after a change occurs to file updated information indicating any changes in the certificate holder's address (including street name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission. Mail sent to La Nueva was returned to our Division of Administration. It has been well over 10 days and staff has not been informed of the provider's correct mailing address, phone number, or liaison information, nor has it requested cancellation of its certificate in compliance with Rule 25-24.514(2), Florida Administrative Code.

Therefore, staff recommends that the Commission assess a \$500 fine for failure to comply with Commission rules and cancel La Nueva's certificate if the fine is not paid and the information received within the specified time.

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ISSUE 3: Should the Commission order all certificated local exchange companies (LECs) to discontinue providing service to La Nueva if certificate number 1550 is canceled?

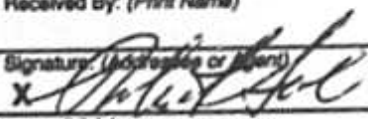
RECOMMENDATION: Yes. The Commission should order all certificated local exchange companies to discontinue providing service to La Nueva if La Nueva's certificate is canceled at the conclusion of the protest period for failure to submit the delinquent regulatory assessment fees, submit the required information, and pay the fines as required in Issue 1 and 2. The Order should state that any LEC providing service to La Nueva must contact the Commission at the conclusion of the protest period as set forth in the Order to determine whether the certificate has been canceled. (Biegalski)

STAFF ANALYSIS: If La Nueva's certificate is canceled, any service offered by La Nueva would be in violation of Rule 25-24.510, Florida Administrative Code. Since the Commission cannot readily identify which LEC provides service to La Nueva, the Commission should order all certificated LECs to discontinue service to La Nueva if La Nueva fails to comply with the terms of the Commission's order resulting from these recommendations. The Order should state that any LEC providing service to La Nueva must contact the Commission at the conclusion of the protest period as set forth in the Order to determine whether the certificate has been canceled.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final. Upon payment of the fines and fees, and receipt of the required information, or cancellation of the certificate, this docket should be closed. (Cox)

STAFF ANALYSIS: If the Commission adopts staff's recommendation in Issue 1 and 2, then La Nueva will have 21 days from the issuance date of the Order to file a timely protest to the Commission's Proposed Agency Action. If no protest is filed, the docket should be closed upon payment of the fines and fees, and receipt of the required information, or upon cancellation of the certificate.

Is your RETURN ADDRESS completed on this reverse side?	SENDER: <ul style="list-style-type: none">• Complete items 1 and/or 2 for additional services.• Complete items 3, 4a, and 4b.• Print your name and address on the reverse of this form so that we can return this card to you.• Attach this form to the front of the mailpiece, or on the back if space does not permit.• Write "Return Receipt Requested" on the mailpiece below the article number.• The Return Receipt will show to whom the article was delivered and the date delivered.	I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.
	3. Article Addressed to: TD 427 La Nueva Estrella	4a. Article Number P 174241010
	5. Received By: (Print Name)	4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
	6. Signature: (Addressee or Agent) 	7. Date of Delivery 6/7/97
8. Addressee's Address (Only if requested and fee is paid)		
PS Form 3811, December 1994 Domestic Return Receipt		

Thank you for using Return Receipt Service.

OK
10/21/97
FORWARDING ORDER
La Nueva Estrella Restaurant.
1050 East 8th Avenue
Hialeah FL 33010-3755