

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause) DOCKET NO. 910264-TC
proceedings against J.P.'S AUTO) ORDER NO. 25101
SERVICE for violation of Rule) ISSUED: 9/24/91
25-24.520, 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

FINAL ORDER RESOLVING
SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

J.P.'S AUTO SERVICE (J.P.'s or the Company) has been a certificated pay telephone service (PATS) provider since July 29, 1988. As a certificated PATS provider, J.P.'s is subject to our jurisdiction.

On May 7, 1991, we issued Order No. 24495 requiring J.P.'s to show cause why it should not be fined \$250 for failure to file an Annual Report for 1990 as required by Rule 25-24.520, Florida Administrative Code. Order No. 24495 also provided that if J.P.'s elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24495 provided that if J.P.'s failed to file a timely response, its certificate would be canceled and this docket closed.

On June 10, 1991, J.P.'s filed a response to Order No. 24495. In the response, J.P.'s asserted that it had indeed filed the Annual Report and therefore, a fine should not be imposed nor should Certificate No. 2082 be canceled. As evidence of its assertion, J.P.'s enclosed a copy of its Regulatory Assessment Fee Return and a canceled check.

Based on the evidence provided, we can only infer that J.P.'s has confused the Regulatory Assessment Fee Requirement with the Annual Report Requirement. These are two separate and distinct requirements, and certificated PATS providers are obligated to comply with both. We have repeatedly ruled that compliance with one requirement is not a substitute for compliance with the other.

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one requirement is not a substitute for compliance with the other. Furthermore, we have also ruled that evidence indicating compliance with one in no way indicates compliance with the other.

J.P.'s has offered no legal or factual argument sufficient to sustain a defense to the allegations raised in Order No. 24495. In essence, J.P.'s response constitutes a default and a waiver of the right to a formal hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that J.P.'S Auto Service shall, within 30 days, pay the \$250 fine proposed in Order No. 24495 or, in the alternative, voluntarily cancel its Certificate of Public Convenience and Necessity No. 2082. It is further

ORDERED that if J.P.'s Auto Service 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 J.P.'s Auto Service fails to respond to this Order, its Certificate of Public Convenience and Necessity No. 2082 shall be canceled and this docket closed.

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



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JKA

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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. 910264-TC



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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

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