

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|                                       |   |                      |
|---------------------------------------|---|----------------------|
| In re: Initiation of show cause       | ) | DOCKET NO. 910240-TC |
| proceedings against FOUNTAINS         | ) | ORDER NO. 25108      |
| LOUNGE for violation of Rule          | ) | ISSUED: 9/24/91      |
| 25-24.520, Annual Report Requirement. | ) |                      |
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|                                       | ) |                      |

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:

Fountains Lounge (Fountains or the Company) has been a certificated pay telephone service (PATS) provider since June 28, 1988. As a certificated PATS provider, Fountains is subject to our jurisdiction.

On May 8, 1991, we issued Order No. 24502 requiring Fountains 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. 24502 also provided that if Fountains elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24502 provided that if Fountains failed to file a timely response, its certificate would be canceled and this docket closed.

On May 20, 1991, Fountains filed a response to Order No. 24502. In its response, Fountains indicated that its failure to file an Annual Report was inadvertent and requested a report form. Subsequently, Fountains did file an Annual Report. Fountains' only defense to Order No. 24502 was that it had not received a blank form.

Fountains' response seems to be two-pronged. The Company seems to believe that a late-filed report and not having received a report form somehow relieves it of liability. We find this reasoning without merit. We have repeatedly ruled that timeliness is an essential element of the Annual Report Requirement, and that

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a late-filed report is inadequate as a defense. Furthermore, we have also ruled that Annual Report forms are mailed out simply as a convenience and a courtesy. The Annual Report Requirement creates an affirmative duty to file the required information. It is incumbent upon a certificated PATS provider to file this information regardless of whether a form is sent to the utility or not.

Fountains fails to set forth any legal or factual argument sufficient to set aside the proposed fine. Essentially, Fountains' response is an admission of the facts alleged in Order No. 24502, 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 Fountains Lounge shall, within 30 days, pay the \$250 fine proposed in Order No. 24502 or, in the alternative, voluntarily cancel its Certificate of Public Convenience and Necessity No. 2046. It is further

ORDERED that if Fountains Lounge 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 Fountains Lounge fails to respond to this Order, its Certificate of Public Convenience and Necessity No. 2046 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

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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.