

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause	)	DOCKET NO. 910230-TC
proceedings against FLAMINGO MOTEL	)	ORDER NO. 25110
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

FINAL ORDER RESOLVING  
SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Flamingo Motel (Flamingo or the Company) has been a certificated pay telephone service (PATS) provider since September 22, 1988. As a certificated PATS provider, Flamingo is subject to our jurisdiction.

On May 7, 1991, we issued Order No. 24494 requiring Flamingo 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. 24494 also provided that if Flamingo elected to cancel its PATS certificate, no fine would be imposed. Finally, Order No. 24494 provided that if Flamingo failed to file a timely response, its certificate would be canceled and this docket closed.

On May 23, 1991, Flamingo filed a response to Order No. 24494. Flamingo indicated that it did, in fact, file an Annual Report. Flamingo was unable to produce any documentation for this assertion. Flamingo did file a 1990 Regulatory Assessment Fee (RAF) Return. We recognize that Flamingo may have confused the RAF Return with the Annual Report. Flamingo also addressed the lack of revenues collected on the telephone and its maintenance difficulties.

We find Flamingo's response specious and without merit. Taken in the light most favorable to Flamingo, the response is little more than a naked assertion that the Company filed an Annual

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. 25110  
DOCKET NO. 910230-TC  
PAGE 2

Report. We have ruled numerous times that such an unsupported assertion standing alone is inadequate as a defense.

Confusing the RAF Return and the Annual Report, this, too, is inadequate as a defense. We have repeatedly ruled that PATS providers are placed on notice of both requirements by completing the application. The two filing requirements are separate and distinct, and one is not a substitute for the other.

Finally, any operational difficulties experienced by Flamingo in the course of providing PATS are not an issue in this docket. The PATS certificate grants authority to provide PATS together with the obligations associated with that authority.

Flamingo's response fails to set forth any factual or legal argument sufficient to set aside the proposed fine. Flamingo's response is, effectively, a default and a waiver of the right to a hearing.

Based on the foregoing, it is, therefore,

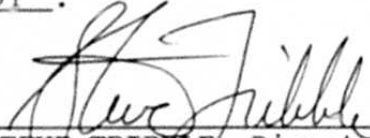
ORDERED by the Florida Public Service Commission that Flamingo Motel shall, within 30 days, pay the \$250 fine proposed in Order No. 24494 or, in the alternative, voluntarily cancel its Certificate of Public Convenience and Necessity No. 2137. It is further

ORDERED that if Flamingo Motel 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 Flamingo Motel fails to respond to this Order, its Certificate of Public Convenience and Necessity No. 2137 shall be canceled and this docket closed.

ORDER NO. 25110  
DOCKET NO. 910230-TC  
PAGE 3

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 )

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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.