

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 930253-TC
certificate to provide pay) ORDER NO. PSC-93-0657-FOF-TC
telephone service by MARK A.) ISSUED: 4/28/93
ANNUNZIATA.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING APPLICATION FOR CERTIFICATE
TO PROVIDE PAY TELEPHONE SERVICE

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On April 14, 1989, this Commission issued Certificate No. 2276 to Annunziata Holdings, Inc. (Annunziata), which authorized it to provide pay telephone services in Florida. Annunziata failed to file its 1989 annual report, as required by Rule 25-24.520, Florida Administrative Code. Accordingly, by Order No. 23252, issued July 25, 1990, we required Annunziata to show cause why we should not impose a fine or, alternatively, cancel Certificate No. 2276. By the specific terms of Order No. 23252, a response was due on or before August 15, 1990.

Annunziata filed a response on August 30, 1990. However, not even withstanding the fact that it was over two weeks late, the response failed to make any specific factual or legal arguments that could have constituted a defense to the allegations contained in the show cause order. By Order No. 24169, issued February 26, 1991, we therefore resolved to impose the fine or, in the alternative, cancel Certificate No. 2276. Since Annunziata failed to pay the fine, we cancelled Certificate No. 2276 on March 29, 1991. On March 10, 1993, Annunziata filed an application for a new certificate to provide pay telephone services.

Pursuant to Rule 25-24.511(4), Florida Administrative Code, this Commission will not grant a new certificate "to any applicant

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who has previously had a certificate involuntarily cancelled unless the applicant shows that granting of the new certificate is in the public interest." We do not believe that Annunziata has made such a showing. For one thing, Annunziata had not even held Certificate No. 2276 for one year before violating Rule 25-24.520, Florida Administrative Code. Further, in its latest application, Annunziata stated that it had never had any regulatory penalty imposed for violating any telecommunications statutes. That is clearly not the case. Accordingly, Annunziata's application for a certificate to provide pay telephone service in the State of Florida is hereby denied.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for a certificate to provide pay telephone service filed by Mark Annunziata of Annunziata Holdings is hereby denied. It is further

ORDERED that, unless a person whose substantial interests are affected by this Order files an appropriate petition, on or before the date set forth in the Notice of Further Proceedings, below, this docket will be closed.

By ORDER of the Florida Public Service Commission, this 28th day of April, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 19, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.