

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of Pay
Telephone Certificate No. 4606
issued to Vertex Enterprize &
Investment, Inc. for violation
of Rule 25-4.0161, F.A.C.,
Regulatory Assessment Fees;
Telecommunications Companies.

DOCKET NO. 981294-TC
ORDER NO. PSC-99-1031-PAA-TC
ISSUED: May 21, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING FINES AND REQUIRING INFORMATION IN ACCORDANCE WITH
RULE 25-24.520, FLORIDA ADMINISTRATIVE CODE, OR CANCELING
PAY TELEPHONE CERTIFICATE

BY THE COMMISSION:

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
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

Vertex Enterprize & Investment, Inc. (Vertex) obtained Pay
Telephone Certificate No. 4606 on June 1, 1996. The Division of
Administration determined that Vertex had not paid the regulatory
assessment fees (RAF) as required by Section 364.336, Florida
Statutes, and Rule 25-4.0161, Florida Administrative Code, for the
year 1997. Also, accrued statutory penalties and interest charges
for the year 1997 had not been paid. Pursuant to Section 364.336,
Florida Statutes, certificate holders must pay a minimum annual RAF

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of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the RAFs form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year.

After this case was docketed, the company's president, Mr. Hensley Hewan, contacted this Commission and advised that he would pay the past due amount; pay future RAFS on a timely basis; and make a settlement offer. On December 8, 1998, the Division of Administration's records reflected the payment of the past due amount in full. By letter dated December 12, 1998, the company proposed to pay a \$100 settlement and asserted that it would pay future RAFs on a timely basis. We approved Vertex's settlement proposal by Order No. PSC-99-0339-AS-TC, issued on February 19, 1999. The Order required Vertex to pay the contribution by February 26, 1999.

However, since that time Vertex has failed to comply with Rule 25-24.520, Florida Administrative Code; Rule 25-4.043, Florida Administrative Code; and Order No. PSC-99-0339-AS-TC.

Rule 25-24.520, Florida Administrative Code, Reporting Requirements

On February 26, 1999, our staff sought to contact Vertex by telephone to inform that we had not received payment of the \$100 contribution. All attempts were unsuccessful. The phone number in our data bank had been disconnected and the other phone number Vertex had provided in the settlement proposal proved to be a wrong number.

It appears that Vertex may have violated Rule 25-24.520, Florida Administrative Code, which requires the reporting to the Commission of an address change and/or a change in the name, title, or telephone number of the individual responsible for Commission contacts, within ten (10) days of its effectiveness. It has been well over 10 days and Vertex has not provided the information required by Rule 25-24.520, Florida Administrative Code, nor has it requested cancellation of its certificate in compliance with Rule 25-24.514, Florida Administrative Code.

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries

Rule 25-4.043, Florida Administrative Code, states:

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The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

On March 23, 1999, our staff attempted to contact Vertex by certified mail asking about the company's intention to pay the \$100 contribution; advising that the company may be in violation of the reporting requirements; and requesting a response by April 7, 1999. As of the date of this vote, Vertex has not responded. Thus, it appears that Vertex has violated Rule 25-4.043, Florida Administrative Code.

Order No. PSC-99-0339-AS-TC

On February 19, 1999, Order No. PSC-99-0339-AS-TC, was issued approving Vertex's offer to contribute \$100 to the State General Revenue Fund. The contribution was due by February 26, 1999. When the contribution was not paid as required by Order No. PSC-99-0339-AS-TC, our staff attempted to contact Vertex via telephone and certified mail. All attempts were unsuccessful. As of the date of this vote, Vertex has not remitted the contribution and therefore, has not complied with Order No. PSC-99-0339-AS-TC.

Conclusion

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.

Accordingly, for the reasons described above, pursuant to Section 364.285, Florida Statutes and Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we find it appropriate to cancel Vertex's certificate, effective December 31, 1998, for failure to comply with Rule 25-24.520, Florida Administrative Code; Rule 25-4.043, Florida Administrative Code; and Order No. PSC-99-0339-AS-TC, unless Vertex pays the fines specified below and provides the information required by Rule 25-24.520, Florida Administrative Code, to the Florida Public Service Commission. Vertex must pay for non-compliance with:

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<u>RULE OR ORDER VIOLATION</u>	<u>FINE</u>
Rule 25-24.520, Florida Administrative Code	\$500
Rule 25-4.043, Florida Administrative Code	\$10,000
Order No. PSC-99-0339-AS-TC	\$20,000

Vertex must comply with these requirements within five business days from the date this Order becomes final. The three fines, totaling \$30,500, will be remitted to the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.516, Florida Statutes.

Upon receipt of the required information and fines, this Docket shall be closed. Should Vertex fail to comply with this Order within five business days from the date this Order becomes final, Vertex shall have its certificate canceled, effective December 31, 1998, and the Docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Vertex Enterprize & Investment, Inc. must provide the correct mailing address, liaison information, and other information in accordance with Rule 25-24.520, Florida Administrative Code, and pay a \$500 fine to the Florida Public Service Commission, for failure to comply with Rule 25-24.520, Florida Administrative Code, within five business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that Vertex Enterprize & Investment, Inc. must pay a \$10,000 fine to the Florida Public Service Commission, for failure to comply with Rule 25-4.043, Florida Administrative Code, within five business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that Vertex Enterprize & Investment, Inc. must pay a \$20,000 fine to the Florida Public Service Commission, for failure to comply with Order No. PSC-99-0339-AS-TC, within five business days from the date this Order becomes final. The fine will be transmitted to the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

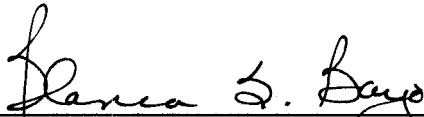
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ORDERED that should Vertex Enterprize & Investment, Inc. fail to comply with this Order, Vertex Enterprize & Investment, Inc.'s Certificate No. 4606 shall be canceled, effective December 31, 1998, and this Docket shall be closed. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed upon the furnishing of the required information and payment of the fines, or upon cancellation of the certificate.

By ORDER of the Florida Public Service Commission this 21st day of May, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

KMP

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 11, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a consummating order.

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.

M E M O R A N D U M

May 21, 1999

RECEIVED-FPSC

99 MAY 21 AM 10:32

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (PEÑA) *kmp CB*
RE: DOCKET NO. 981294-TC - CANCELLATION BY FLORIDA PUBLIC
SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 4606
ISSUED TO VERTEX ENTERPRIZE & INVESTMENT, INC. FOR
VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY
ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

99-1031-PAA

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER IMPOSING
FINES AND REQUIRING INFORMATION IN ACCORDANCE WITH RULE 25-24.520,
FLORIDA ADMINISTRATIVE CODE, OR CANCELING PAY TELEPHONE
CERTIFICATE, to be issued in the above-referenced docket. (Number
of pages in order - 6)

KMP/anr
Attachment
cc: Division of Communications
I: 981294fn.kmp

See 2.5

1 Certified