

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of Pay
Telephone Certificate No. 3613
issued to Florida Phone for
violation of Rules 25-4.0161,
F.A.C., Regulatory Assessment
Fees; Telecommunications
Companies, and 25-24.520,
F.A.C., Reporting Requirements.

DOCKET NO. 981237-TC
ORDER NO. PSC-99-1093-PAA-TC
ISSUED: June 1, 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 CANCELING PAY TELEPHONE CERTIFICATE INVOLUNTARILY

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 formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Florida Phone (Florida Phone) currently holds Certificate of Public Convenience and Necessity No. 3613, issued by the Commission on December 21, 1993, authorizing the provision of Pay Telephone service. Florida Phone has not paid the regulatory assessment fees [RAF(s)] required by Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, for the years 1996 and 1997. Also, accrued statutory penalties and interest charges for the years 1996 and 1997 have not been paid. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF 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 form and applicable fees are due to the

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Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing Pay Telephone service. All applicants must attest that these rules have been received and understood by the applicant and an affidavit must be attached to the application in order for the application to be processed.

Pursuant to Section 350.113(4), Florida Statutes, the RAFs forms for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fees is due. Florida Phone has been given adequate opportunity to pay. The Commission's correspondence regarding the RAFs was returned unopened to us by the United States Postal Service stamped "return to sender" and "unclaimed."

On December 15, 1998, Order No. PSC-98-1692-FOF-TC was issued, imposing a \$500 fine for RAFs violation, a \$500 fine for reporting requirements violation, and requiring payment of the fines and past due RAFs, along with statutory penalties and interest charges accrued, by January 12, 1999, or the company's certificate would be canceled.

On December 28, 1998, Mr. Denny Golladay, owner, contacted our staff and stated that he had requested by fax the cancellation of the company's certificate in June of 1995. He further stated that this Commission had made an in error in stating the correct name of the company when Order No. PSC-93-1710-FOF-TC, issued on November 29, 1993, was issued. Mr. Golladay followed up his telephone call by responding to the Order by letter dated January 2, 1999. The letter included his original certificate and reflected the date he closed his business as June 5, 1996.

Therefore, Florida Phone did not complied with Rule 25-24.514(2), Florida Administrative Code, which states:

(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing and shall provide the following with its request:

(a) Statement of intent and date to pay Regulatory Assessment Fee.

(b) Statement of why the certificate is proposed to be canceled.

Accordingly, since the company's certificate remains active until it requests a voluntary cancellation pursuant to Rule 25-24.514(2), Florida Administrative Code, or we involuntarily cancel the certificate, Florida Phone is responsible for the 1996 RAFs. As of the date of this vote, Florida Phone continues to be in violation of our rules for non-payment of RAFS for 1996.

In order to address Mr. Golladay's concern with the discrepancy in the name of the company, our staff sought to obtain a copy of the two 1995 RAFs forms from the Division of Administration. The 1995 RAFs form for the period January 1, 1995 to June 30, 1995 was signed and dated June 20, 1995. The form indicated that the company had eight (8) payphones in operation during the first half of 1995. The 1995 RAF form for the period July 1, 1995 to December 31, 1995 was signed and dated January 26, 1996. This form indicated that the company had nine (9) payphones in operation during the last half of 1995. Neither form had a statement notifying us that his business had gone out of business in June 1995.

Review of the company's original application from the Division of Records and Reporting in Docket No. 930943-TC reflects the name Florida Telephone. Inquiry at the Florida Department of State, Division of Corporations reflects that the fictitious name was registered as Florida Phone. The company's 1995 RAF form for the period July 1 through December 31, 1995, was printed by the Commission as Florida Phone. However, the company corrected the name to reflect Florida Telephone. Before processing applications, we review the name listed on the application to confirm that the name matches with the name registered with the Division of Corporations. Therefore, since the company corrected the name in the 1995 RAFs form, we find it appropriate to acknowledge the name change from Florida Phone to Florida Telephone.

For the reasons described above, pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we deny Florida Telephone's request for voluntary cancellation of Pay Telephone Certificate No. 3613 for failure to comply with the provisions of 25-24.514(2), Florida Administrative Code. However, we find it appropriate to involuntarily cancel Florida Telephone's certificate, effective June 5, 1996, for failure to pay RAFS pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161,

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Florida Administrative Code. Since Florida Telephone is no longer in business, there would be no purpose in requiring Florida Telephone to pay a fine. By involuntarily canceling Florida Telephone's certificate, however, we will be able to track this company should it apply for another certificate with us in the future. The cancellation of the certificate and the closing of the Docket in no way diminishes Florida Telephone's obligation to pay applicable delinquent RAFS, statutory penalties, and interest charges for 1996.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby acknowledge the name change from Florida Phone to Florida Telephone. It is further

ORDERED that we hereby deny Florida Telephone's request for voluntary cancellation of Pay Telephone Certificate No. 3613. It is further

ORDERED that pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we hereby cancel Florida Telephone's Pay Telephone Certificate No. 3613, effective June 5, 1996, for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that Florida Phone remains obligated for all due and owing regulatory assessment fees for the year 1996, as well as accrued statutory penalties and interest charges for 1996. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a consummating order 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.

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By ORDER of the Florida Public Service Commission, this 1st
day of June, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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 22, 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.