

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida  
Public Service Commission of Pay  
Telephone Certificate No. 1415  
issued to Pepe's American, Inc.  
for violation of Rule 25-4.0161,  
F.A.C., Regulatory Assessment  
Fees; Telecommunications  
Companies.

DOCKET NO. 991228-TC  
ORDER NO. PSC-99-2410-PAA-TC  
ISSUED: December 8, 1999

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
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 a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

Pepe's American, Inc. (Pepe's American) currently holds  
Certificate of Public Convenience and Necessity No. 1415, issued by  
the Commission on January 10, 1999, authorizing the provision of  
Pay Telephone service. Pepe's American has not paid the regulatory  
assessment fees (RAFs) required by Section 364.336, Florida  
Statutes, and Rule 25-4.0161, Florida Administrative Code, for the  
year 1998. Also, accrued statutory penalties and interest charges  
for the year 1998 have not been paid.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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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 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. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. However, pursuant to Section 350.113(4), Florida Statutes, the Commission shall provide at least a 45 days notice of the date the payment is due prior to the due date. Pepe's American was scheduled to remit its RAFs by February 1, 1999.

On April 1, 1999, we received a letter from Pepe's American advising that it was no longer in the Pay Telephone business and requesting cancellation of its certificate. Our staff called the President, Mr. Jose Gonzalez on April 2, 1999, and explained that although the company had paid the 1998 RAFs, it had paid after the due date of February 1, 1999; therefore, statutory penalties and interest charges were applicable. Mr. Gonzalez advised staff that he would consider paying the charges. Our staff followed up the phone call with a letter on April 13, 1999. As of the date of this vote, the penalties and interest charges remain unpaid.

Pepe's American has 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.

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

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, Pepe's American is responsible for the RAFs. As of the date of this vote, Pepe's American continues to be in violation of our rules for non-payment of statutory penalties and interest charges for 1998.

For the reasons described above, pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we deny Pepe's American's request for voluntary cancellation of Pay Telephone Certificate No. 1415 for failure to comply with the provisions of 25-24.514(2), Florida Administrative Code. However, we find it appropriate to involuntarily cancel Pepe's American's certificate, effective on the date of issuance of the Consummating Order, for failure to pay RAFs pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. Since Pepe's American is no longer in business, there would be no purpose in requiring Pepe's American to pay a fine. By involuntarily canceling Pepe's American's certificate, however, we would 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 Pepe's American's obligation to pay applicable delinquent statutory penalties, and interest charges for 1998.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby deny Pepe's American, Inc.'s request for voluntary cancellation of Pay Telephone Certificate No. 1415. It is further

ORDERED that pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we hereby cancel Pepe's American, Inc.'s Pay Telephone Certificate No. 1415, effective on the date of issuance of the Consummating Order, for failure to comply with Rule 25-24.514(2), Florida Administrative Code; Section 364.336, Florida Statutes; and Rule 25-4.0161, Florida Administrative Code. It is further

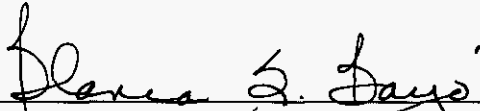
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ORDERED that Pepe's American, Inc. remains obligated for all due and owing accrued statutory penalties and interest charges for the year 1998. It is further

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.

By ORDER of the Florida Public Service Commission, this 8th day of December, 1999.

  
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BLANCA S. BAYÓ, 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 120.569(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 December 29, 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.