

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of Pay
Telephone Certificate No. 5104
issued to Gary Michael Capasso
for violation of Rule 25-4.0161,
F.A.C., Regulatory Assessment
Fees; Telecommunications
Companies.

DOCKET NO. 010496-TC
ORDER NO. PSC-01-1758-PAA-TC
ISSUED: August 29, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALÉCKI

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.

Gary Michael Capasso (Gary Michael Capasso) currently holds
Certificate of Public Convenience and Necessity No. 5104, issued by
the Commission on March 18, 1997, authorizing the provision of pay
telephone service. Gary Michael Capasso 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 2000. Also, accrued statutory penalties and interest
charges for the year 2000 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

DOCUMENT NUMBER-DATE

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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.

Pursuant to Section 350.113(4), Florida Statutes, the RAFs forms, for the period of January 1 through December 31, are mailed to the entities at least 45 days prior to the date that payment of the fee is due. Gary Michael Capasso was scheduled to remit the RAFs by January 30, 2001.

On May 15, 2001, the Commission received correspondence from Mr. Capasso. Mr. Capasso stated that he had suffered a heart attack in July 2000 and assumed his wife had cancelled his certificate. On May 17, 2001 staff wrote Mr. Capasso and explained that the Commission has no record of receiving a prior request for cancellation and that in order to recommend a voluntary cancellation, the 2000 RAF would need to be paid, along with the company's intent and date to pay the 2001 RAF. As of July 26, 2001, the Commission has not received payment or the information required by Rule 25-24.514, Florida Administrative Code.

Gary Michael Capasso 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.

(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, Gary Michael Capasso is responsible for the RAFs.

As of the date of the vote, Gary Michael Capasso continues to be in violation of our rules for nonpayment of RAFs for 2000.

For the reasons described above, pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we deny Gary Michael Capasso's request for voluntary cancellation of pay telephone Certificate No. 5104 for failure to comply with the provisions of Rule 25-24.514(2), Florida Administrative Code. However, we find it appropriate to involuntarily cancel Gary Michael Capasso's certificate, effective May 15, 2001, for failure to pay RAFs pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Since Gary Michael Capasso is no longer in business, there would be no purpose in requiring Gary Michael Capasso to pay a fine. By involuntarily canceling Gary Michael Capasso'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 Gary Michael Capasso's obligation to pay applicable delinquent RAFs, statutory penalties, and interest charges. The collection of the past due fees shall be referred to the Office of the Comptroller for further collection efforts. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336 and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby deny Gary Michael Capasso's request for voluntary cancellation of pay telephone Certificate No. 5104. It is further

ORDERED that pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we hereby cancel Gary Michael Capasso's pay telephone Certificate No. 5104, effective May 15, 2001, 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

ORDERED that Gary Michael Capasso remains obligated for all due and owing Regulatory Assessment Fees for the year 2000, as well as accrued statutory penalties and interest charges. The

ORDER NO. PSC-01-1758-PAA-TC
DOCKET NO. 010496-TC
PAGE 4

collection of the past due fees shall be referred to the Office of the Comptroller for further collection efforts. 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" 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 29th Day of August, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JAE

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 19, 2001.

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.