

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of Pay
Telephone Certificate No. 7053
issued to Anthony Narducci for
violation of Rule 25-4.0161,
F.A.C., Regulatory Assessment
Fees; Telecommunications
Companies.

DOCKET NO. 001150-TC
ORDER NO. PSC-01-1787-FOF-TC
ISSUED: September 4, 2001

The following Commissioners participated in the disposition of
this matter:

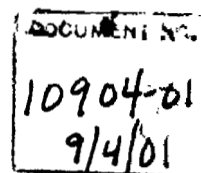
E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Anthony Narducci ("Narducci" or "Company") was granted
Certificate No. 7053, issued on July 6, 1999, authorizing the
provision of Pay Telephone service (PATS). On December 8, 1999,
the Division of the Commission Clerk and Administrative Services
(CCA) mailed the 1999 Regulatory Assessment Fee (RAF) return
notice. Payment was due by January 31, 2000. CCA mailed the
delinquent notice for the 1999 RAF on February 29, 2000.

On September 29, 2000, Order No. PSC-00-1788-PAA-TC was
issued, which imposed a \$500 fine. The company had until October
20, 2000, to pay the past due fee, including penalty and interest
charges, and either pay the \$500 fine or protest the Order. We
received the company's payment for the 1999 RAF, including penalty
and interest charges and the company's proposed settlement on
October 20, 2000. On February 1, 2001, our staff wrote the company
requesting additional information regarding the company's
settlement offer and advised the company that its proposed
settlement of \$50 was not one that staff could recommend accepting
since it was not consistent with our previous decisions. We



received the company's 2000 RAF, including penalty and interest charges on February 15, 2001. As of May 1, 2001, the company had not provided the additional information requested by our staff.

By Order No. PSC-01-1157-FOF-TC, issued May 21, 2001, we rejected Mr. Narducci's settlement offer and rendered Order No. PSC-00-1788-PAA-TC final due to Mr. Narducci's failure to properly respond to that Order in accordance with Rule 25-22.029, Florida Administrative Code. Pursuant to that Order, Mr. Narducci's PATs Certificate No. 7053 was canceled on May 31, 2001. By letter dated June 5, 2001, Mr. Narducci requested reconsideration of Order No. PSC-01-1157-FOF-TC.

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

In his letter requesting reconsideration, and Narducci argues that the Order should be reconsidered because he did not receive staff's letter advising him that ". . . staff could not recommend acceptance of his settlement offer since the check register was insufficient" Further, Mr. Narducci explains that the original assessment of \$59 for RAF fees was paid in March of 2000. Payment was due on January 31, 2000. When Mr. Narducci was advised that the check was never received, the fee was paid and a letter offering a settlement of \$50 was submitted to the Commission. He states that a fine of \$500 based on a \$59 fee appears to be excessive. Narducci asserts that "I felt that a \$50 fine was acceptable, even though I did pay the assessment on time; unfortunately the check was mis-posted or never received."

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Pursuant to Section 364.285, Florida Statutes, we may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. When the company failed to remit payment of its RAF fees in the manner prescribed in the Commission rules, it became subject to a fine. Although Mr. Narducci states that he never received our staff's letter advising him that staff could not recommend accepting his settlement offer of \$50, Mr. Narducci has not demonstrated a point of fact which we should have considered and failed to do so. Since there is no further action required by us, this docket shall be closed. Further, Narducci's request for reconsideration of Order No. PSC-01-1157-FOF-TC is hereby denied.

We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.3375, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Anthony Narducci's Motion for Reconsideration of Order No. PSC-01-1157-FOF-TC is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 4th day of September, 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)
FRB

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 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 after the issuance 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.