

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 910263-TC
proceedings against JOSEPH A.)	ORDER NO. 25196
MARTINEZ for violation of Rule)	ISSUED: 10/10/91
25-24.520, Annual Report Requirement.)	
<hr/>		

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL McK. WILSON

FINAL ORDER RESOLVING
SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Joseph A. Martinez (Mr. Martinez) has been a certificated pay telephone service (PATS) provider since August 8, 1989. As a certificated PATS provider, Mr. Martinez is subject to our jurisdiction.

On May 7, 1991, we issued Order No. 24495 requiring Mr. Martinez to show cause why he should not be fined \$250 for failure to file an Annual Report for 1990 as required by Rule 25-24.520, Florida Administrative Code. Order No. 24495 also provided that if Mr. Martinez elected to cancel his PATS certificate, no fine would be imposed. Finally, Order No. 24495 provided that if Mr. Martinez failed to file a timely response, his certificate would be canceled and this docket closed.

On June 4, 1991 Mr. Martinez filed a response to Show Cause Order No. 24495. In his response, Mr. Martinez alleges that he did not file the Annual Report because he had not provided service and he was unaware of the requirement. Mr. Martinez also alleges that he did not file the report because he did not "...receive this letter until May 27". We suspect the letter Mr. Martinez is referring to is the Show Cause Order.

Mr. Martinez's response is inadequate on its face. Mr. Martinez makes no legal or factual argument sufficient to justify setting aside the proposed fine. The Annual Report requirement is predicated on possession of a PATS certificate and not on provision

DOCUMENT NUMBER-DATE
 10075 OCT 10 1991
 FPSC-RECORDS/REPORTING

ORDER NO. 25196
DOCKET NO. 910263-TC
PAGE 2

of the service. The requirement is not contingent upon provision of service. We have also repeatedly ruled that the certificate application process is constructive notice of the Annual Report Requirement. By completing the application, Mr. Martinez was placed on notice of the requirement. Mr. Martinez's response constitutes a default and a waiver of the right to a hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Joseph A. Martinez shall, within 30 days, pay the \$250 fine proposed in Order No. 24495 or, in the alternative, voluntarily cancel his Certificate of Public Convenience and Necessity No. 2337. It is further

ORDERED that if Joseph A. Martinez elects to voluntarily cancel his certificate, the \$250 fine shall not be imposed, but he shall still be liable for the 1991 Regulatory Assessment Fee. It is further

ORDERED that if Joseph A. Martinez fails to respond to this Order, his Certificate of Public Convenience and Necessity No. 2337 shall be canceled and this docket closed.

By ORDER of the Florida Public Service Commission, this 10th day of OCTOBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JKA

by: Kay Hejman
Chief, Bureau of Records

ORDER NO. 25196
DOCKET NO. 910263-TC
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.