



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: NOVEMBER 5, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB*
DIVISION OF LEGAL SERVICES (WATTS) *CBW/NCB*

RE: DOCKET NO. 981300-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 4310 ISSUED TO MANUEL SERNA FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES AND FINE ASSESSMENT FOR VIOLATION OF RULE 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES

AGENDA: 11/17/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981300.RCM

RECORDS AND REPORTING

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CASE BACKGROUND

On January 20, 1996, the Commission issued certificate number 4310 to Mr. Manuel Serna. The Division of Communications received a request for cancellation on April 17, 1997. Upon receipt of each company's request for cancellation, staff researched accounts to determine if the appropriate Regulatory Assessment Fees had been submitted. Staff determined that Mr. Serna had failed to submit the Regulatory Assessment Fees, including statutory penalties and interest, for the years 1996 and 1997.

The Division of Administration mailed a certified letter to Mr. Serna on June 3, 1997, informing him of the delinquent fees. This letter was signed for and received on June 5, 1997. (Attachment A, Page 6) In addition, Division of Communications

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staff mailed a certified letter to Mr. Serna on June 19, 1997 informing him that the regulatory assessment fees are due whether he installed pay telephones or not. Furthermore, the letter stated that if the fees were not received, staff would recommend that a fine be assessed. This letter was signed for and received on June 23, 1997. (Attachment B, Page 6) To date, the delinquent fees, including statutory penalties and interest, have not been received.

Therefore, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the request for voluntary cancellation submitted by Manuel Serna?

RECOMMENDATION: No. (Biegalski)

STAFF ANALYSIS: Mr. Serna has not complied with Rule 25-24.514(2), Florida Administrative Code, Cancellation of a Certificate, which states,

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.

Staff mailed a certified letter to Mr. Serna informing him of his obligation as a certificated pay telephone provider. To date, staff has not received a response or payment of the delinquent regulatory assessment fees, including statutory penalties and interest.

ISSUE 2: Should the Commission impose a \$500 fine or cancel the pay telephone certificate of Mr. Manuel Serna for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees, effective December 31, 1997?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel Mr. Serna's certificate effective December 31, 1997, if the fine and the regulatory assessment fees, including statutory penalties and interest, are not received by the Commission within 5 business days after the conclusion of the 21 day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fines and the regulatory assessment fees, including statutory penalties and interest, are not received, the certificates should be canceled. (Biegalski)

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Staff notified Mr. Serna via certified letter on June 3, 1997, and June 19, 1997, that the regulatory assessment fees had not been submitted. Staff verified with the Division of Administration on October 29, 1998, that Mr. Serna had not submitted the regulatory assessment fees for the years 1996 and 1997, along with statutory penalties and interest charges. Therefore, Mr. Serna has failed to comply with Rule 25-4.0161, Florida Administrative Code.

Accordingly, staff recommends that the Commission assess a \$500 fine for failure to comply with Commission rules or cancel Mr. Serna's pay telephone certificate effective December 31, 1997, if the fine and the regulatory assessment fees, along with statutory penalties and interest, are not paid within the specified time. Mr. Serna should not be assessed regulatory assessment fees for 1998.

ISSUE 3: Should the Commission fine Manuel Serna \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: The Commission should impose a \$10,000 fine for failure to comply with Rule 25-4.043, Florida Administrative Code. The fine should be remitted within 5 business days after the conclusion of the 21 day protest period. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine is not received, it should be forwarded to the Office of the Comptroller for collection. (Biegalski)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company fails to comply with Commission rules. Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires a reply to staff inquiries be furnished in writing within (15) days of the Commission inquiry. On June 3, 1997, and again on June 19, 1997, staff sent Mr. Serna correspondence regarding the delinquent regulatory assessment fees and the cancellation of his pay telephone certificate. It has been well over 15 days since staff mailed the certified letters and Mr. Serna has not responded.

Accordingly, staff recommends that the Commission assess a \$10,000 fine for failure to comply with Commission rules.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final. Upon payment of the fines and fees, or cancellation of the certificate, this docket should be closed. (Watts)

STAFF ANALYSIS: If the Commission adopts staff's recommendation in Issues 2 and 3, then Mr. Serna will have 21 days from the issuance date of the Order to file a timely protest to the Commission's Proposed Agency Action. If no protest is filed, the docket should be closed upon payment of the fines and fees, or upon cancellation of the certificate.

Is your RETURN ADDRESS completed on the reverse side?

SENDER: <ul style="list-style-type: none">• Complete items 1 and/or 2 for additional services.• Complete items 3, 4a, and 4b.• Print your name and address on the reverse of this form so that we can return this card to you.• Attach this form to the front of the mailpiece, or on the back if space does not permit.• Write "Return Receipt Requested" on the mailpiece below the article number.• The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.
3. Article Addressed to: TF814	4a. Article Number	Thank you for using Return Receipt Service.
5. Received By: (Print Name)	4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
6. Signature (Addressee or Agent) X <i>[Signature]</i>	7. Date of Delivery 10/5	
	8. Addressee's Address (Only if requested and fee is paid)	

PS Form 3811, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Mr. Manuel Sema
15376 S.W. 42nd Lane
Miami, FL 33185-4534, (certified)

4a. Article Number

234957109

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery

DEC 23 1997

5. Received By: (Print Name)

Manuel Sema

6. Signature: (Addressee or Agent)

X

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

Domestic Return Receipt