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DATE: AUGUST 2, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PJC*
DIVISION OF LEGAL SERVICES (BANKS) *FRB*

RE: DOCKET NO. 001150-TC - 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.

AGENDA: AUGUST 14, 2001 - REGULAR AGENDA -MOTION FOR RECONSIDERATION- PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\001150R3.RCM

CASE BACKGROUND

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. The Commission received the company's payment for the 1999 RAF,

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

including penalty and interest charges and the company's proposed settlement on October 20, 2000. On February 1, 2001, 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 the Commission's previous actions. The Commission 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 staff.

By Order No. PSC-01-1157-FOF-TC, issued May 21, 2001, the Commission 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 Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.3375, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Anthony Narducci's Motion for Reconsideration of Order No. PSC-01-1157-FOF-TC be granted?

RECOMMENDATION: No. Anthony Narducci has failed to identify that there has been a mistake of fact or law, or a point of law which was overlooked or which the Commission failed to consider in rendering its order. Therefore, staff recommends that Anthony Narducci's Motion for Reconsideration of Order Denying Settlement Offer and Rendering Order No. PSC-00-1788-PAA-TC Final and Closing Docket should not be granted. (BANKS)

STAFF ANALYSIS: 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."

Pursuant to Section 364.285, Florida Statutes, the Commission 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 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 the Commission should have considered and failed to do so. Accordingly, Narducci's request for reconsideration of Order No. PSC-01-1157-FOF-TC should be denied.

DOCKET NOS. 001150-TC
DATE: AUGUST 2, 2001

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Since there is no further action required by the Commission, this docket should be closed. (BANKS)

STAFF ANALYSIS: Since there is no further action required by the Commission, this docket should be closed.