

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cancellation by Florida
Public Service Commission of Pay
Telephone Certificate No. 5378
issued to Gregory A. Philip
d/b/a GAPTEL for violation of
Rule 25-4.0161, F.A.C.,
Regulatory Assessment Fees;
Telecommunications Companies.

DOCKET NO. 010499-TC
ORDER NO. PSC-01-1632-PAA-TC
ISSUED: August 10, 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

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.

Gregory A. Philip d/b/a GAPTEL (GAPTEL) currently holds Certificate of Public Convenience and Necessity No. 5378, issued by the Commission on July 18, 1997, authorizing the provision of pay telephone service. GAPTEL 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 active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable

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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. GAPTEL was scheduled to remit its RAFs by January 30, 2001.

On April 18, 2001, we wrote the company a letter and explained that this docket had been established for non-payment of the 2000 RAFs and to contact our staff if it was interested in resolving the docket. Mr. Gregory A. Philip, the owner, called staff on April 23, 2001 and stated that he is no longer in the payphone business and wanted to cancel his certificate. Mr. Philip stated he would pay the past due balance, pay the 2001 RAF, and write a letter requesting cancellation. On May 3, 2001, we received a letter from Mr. Philip requesting cancellation of the certificate. We wrote the company on May 16, 2001 and again on June 14, 2001, and explained that in order to be granted a voluntary cancellation, the past due RAF including penalty and interest charges, must be paid. In addition the company would need to pay the 2001 RAF or provide a date certain it will be paid. As of July 6, 2001, the company has not paid the 2000 RAF, including penalty and interest charges, nor paid the 2001 RAF or provided a date certain the 2001 RAF would be paid in compliance with Rule 25-24.514, Florida Administrative Code.

GAPTEL 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, GAPTEL is responsible for the RAFs. As of the date of the vote, GAPTEL 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 GAPTEL's request for voluntary cancellation of pay telephone Certificate No. 5378 for failure to comply with the provisions of Rule 25-24.514(2), Florida Administrative Code. However, we find it appropriate to involuntarily cancel GAPTEL's certificate, effective May 3, 2001, for failure to pay RAFs pursuant to Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.

Since GAPTEL is no longer in business, there is no purpose in requiring GAPTEL to pay a fine. By involuntarily canceling GAPTEL's certificate, however, we will 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 GAPTEL'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 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 Gregory A. Philip d/b/a GAPTEL's request for voluntary cancellation of pay telephone Certificate No. 5378. It is further

ORDERED that pursuant to Rule 25-24.514(1)(b) and (c), Florida Administrative Code, we hereby cancel Gregory A. Philip d/b/a GAPTEL's pay telephone Certificate No. 5378, effective May 3, 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

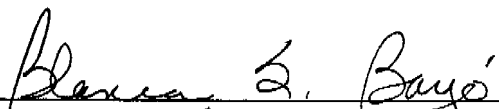
ORDER NO. PSC-01-1632-PAA-TC
DOCKET NO. 010499-TC
PAGE 4

ORDERED that Gregory A. Philip d/b/a GAPTEL remains obligated for all due and owing Regulatory Assessment Fees for the years 2000 and 2001, as well as accrued 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. 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 10th Day of August, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative 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 August 31, 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.