

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause) DOCKET NO. 910369-TC
proceedings against THOMAS L. DOUTT) ORDER NO. 25100
for violation of Rule 25-24.520,) ISSUED: 9/24/91
25-24.520, Annual Report Requirement.)
_____)

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:

Thomas L. Douth (Mr. Douth) has been a certificated pay telephone service (PATS) provider since March 13, 1986. As a certificated PATS provider, Mr. Douth is subject to our jurisdiction.

On May 13, 1991, we issued Order No. 24516 requiring Mr. Douth 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. 24516 also provided that if Mr. Douth elected to cancel his PATS certificate, no fine would be imposed. Finally, Order No. 24516 provided that if Mr. Douth failed to file a timely response, his certificate would be canceled and this docket closed.

On May 31, 1991, Mr. Douth filed a response to Order No. 24516. In his response, Mr. Douth asserted that he had in fact filed the report. Mr. Douth also offered to send another Annual Report. Staff subsequently received a late-filed Annual Report on April 12, 1991.

We find Mr. Douth's response without merit. Essentially, Mr. Douth's response is nothing more than a bald assertion of compliance. He offers no evidence to substantiate his assertion, nor does he state when he allegedly filed it. We have frequently ruled that an assertion of compliance standing on its own is insufficient as a defense.

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We further find the subsequent late-filed Annual Report insufficient as a remedy. We have ruled many times that timeliness is integral to the Annual Report Requirement.

Mr. Doult has failed to raise any factual or legal arguments with sufficient specificity to overcome the allegations set forth in Order No. 24516. Essentially, Mr. Doult's response is 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 Thomas L. Doult shall, within 30 days, pay the \$250 fine proposed in Order No. 24516 or, in the alternative, voluntarily cancel his Certificate of Public Convenience and Necessity No. 694. It is further

ORDERED that if Thomas L. Doult 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 Thomas L. Doult fails to respond to this Order, his Certificate of Public Convenience and Necessity No. 694 shall be canceled and this docket closed.

By ORDER of the Florida Public Service Commission, this 24th day of SEPTEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JKA

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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.

MEMORANDUM

September 20, 1991

TO : DIVISION OF RECORDS AND REPORTING
FROM : DIVISION OF LEGAL SERVICES (ADAMS)
RE : DOCKET NO. 910369-TC



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Attached is a FINAL ORDER RESOLVING SHOW CAUSE PROCEEDINGS in the above-referenced docket, which is ready to be issued.

JKA/ttl
Attachment
cc: Division of Communications

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