

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 900489-TC
proceedings against UNIQUE)	ORDER NO. 23904
COMMUNICATIONS, INC. for violation of))	ISSUED: 12-20-90
Commission Rule 25-24.520, 1989)	
Annual Report Requirement, and Rule)	
25-4.043, Response Requirement.)	
_____)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER RESOLVING SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Rule 25-2.420, Florida Administrative Code, requires certificated Pay Telephone Service (PATS) providers to file an annual report with this Commission's Division of Communications by January 31 of the following year. On February 6, 1990, notices requiring compliance within 20 days were sent to all PATS providers that had failed to comply with the 1989 annual report requirement by the January 31, 1990 deadline. In May of this year, a docket was opened to require Unique Communications (Unique) to show cause why it should not be fined \$100 for failure to file the required annual report for 1989 and promptly respond to staff communications as required by Rule 25-4.043. On June 7, 1990, Unique filed an annual report, over 4 months after the deadline for filing such reports. On July 19, 1990, we issued Order No. 23222 initiating show cause proceedings against Unique. Subsequently on July 27, Unique filed a written response to Order No. 23222.

We adopt the position that a late filed annual report is inadequate as compliance with Rule 25-24.520, Florida Administrative Code. Timely filing is an essential element of the annual report requirement. Furthermore, the late filed annual report was so late as to fail as an adequate response to staff's communication of February 6, 1990.

The response filed on June 19, 1990 reflects some confusion with difference between the annual report requirement of Rule 25-24.520, Florida Administrative Code, and the regulatory assessment fee required by Rule 25-4.0161, Florida Administrative Code. Such

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confusion does not constitute a reasonable justification for failure to file the annual report in a timely manner nor is it adequate cause for failure to promptly respond to staff inquiries. Furthermore, Unique's response explicitly confirms the tardiness of the annual report filing. Unique's response fails to make specific legal or factual arguments required by Rule 25-22.036(7)(a), Florida Administrative Code. Unique makes no legal arguments and the factual assertions contained in its response fail to rise to the standards required to make out a reasonable defense to this action. Based upon its inadequacies Unique's response is a non-response and constitutes a default.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Unique Communications, Inc. be fined \$100 for failure to file in a timely manner the annual report required by Rule 25-24.520, Florida Administrative Code, or in the alternative to voluntarily cancel Certificate of Public Convenience and Necessity No. 122 and face no imposition of a fine in this matter. It is further

ORDERED that if Unique Communications, Inc. fails to pay the above-mentioned fine within 30 days of the issuance of this Order, Certificate No. 122 shall be automatically cancelled by the terms of this Order. It is further

ORDERED that this docket remain open pending payment of the fine or cancellation of the certification.

By ORDER of the Florida Public Service Commission this 20th day of DECEMBER, 1990.



STEVE TRIBBIE, Director
Division of Records and Reporting

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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.