

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 910390-TC
proceedings against CLIFTON L.)	ORDER NO. 25106
CLARKE for violation of Rule)	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

FINAL ORDER RESOLVING
SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

Clifton L. Clarke (Mr. Clarke) has been a certificated pay telephone service (PATS) provider since November 14, 1989. As a certificated PATS provider, Mr. Clarke is subject to our jurisdiction.

On May 13, 1991, we issued Order No. 24522 requiring Mr. Clarke 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. 24522 also provided that if Mr. Clarke elected to cancel his PATS certificate, no fine would be imposed. Finally, Order No. 24522 provided that if Mr. Clarke failed to file a timely response, his certificate would be canceled and this docket closed.

On May 22, 1991, Mr. Clarke filed a response to Order No. 24522. In his response, Mr. Clarke asserted that he had in fact filed the Annual Report as required. He presented no evidence of this alleged filing, but did offer to complete another Annual Report if our Staff would forward him a blank form. Our Staff complied with this request, and Mr. Clarke sent a late-filed Annual Report on May 31, 1991.

We find Mr. Clarke's response insufficient to justify setting aside the proposed penalty. We have repeatedly ruled that a naked assertion of compliance unsupported by any evidence is not enough

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to avoid a fine for failing to file an Annual Report. Furthermore, a late-filed Annual Report is an inadequate remedy.

Mr. Clarke's response makes no arguments of either fact or law of sufficient specificity to justify setting aside the proposed fine. Essentially, Mr. Clarke's response constitutes a default and a waiver of the right to a formal hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Clifton L. Clarke shall, within 30 days, pay the \$250 fine proposed in Order No. 24522 or, in the alternative, voluntarily cancel his Certificate of Public Convenience and Necessity No. 2403. It is further

ORDERED that if Clifton L. Clarke 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 Clifton L. Clarke fails to respond to this Order, his Certificate of Public Convenience and Necessity No. 2403 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

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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.