

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Reinstatement) DOCKET NO. 920524-TC
of Pay Telephone Certificate) ORDER NO. PSC-92-0651-FOF-TC
No. 2512 Issued to SWAN CARE) ISSUED: 07/13/92
HOMES.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING PAY TELEPHONE CERTIFICATE

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On May 18, 1990, we issued Swan Care Homes Certificate No. 2512 for the purpose of providing pay telephone service (PATS) in Florida. PATS providers are subject to the provisions of Rules 25-24.505 through 25-24.520, Florida Administrative Code, which govern the operation of PATS.

On December 5, 1990, a letter was sent to Swan Care Homes requesting the Annual Pay Telephone Service Report (Annual Report). The letter advised that failure to respond as required could result in the Commission fining the Company and disconnecting its pay phones. Swan Care Homes did not file its Annual Report, nor did it respond in any manner to this letter.

On May 2, 1991, we mandated that Swan Care Homes show cause (Order No. 24467 in Docket No. 910430-TC) why a \$250 fine should not be imposed or its certificate cancelled for failing to file its 1990 Annual Report as required by Rule 25-24.520, Florida

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Administrative Code, and for failing to respond to staff inquiries as required by Rule 25-4.043, Florida Administrative Code.

Rule 25-24.520(2), Florida Administrative Code (1991), states:

Each pay telephone service company shall file with the Division of Communications by January 31 of each year, a report showing the certificate holder's name and address, the telephone number of the person responsible for Commission contacts, the number of instruments in place as of the end of the year, a statement of whether the company is currently providing service to customers and, if not, the last date service was provided to customers and plans for providing service in the future.

Additionally, Rule 25-24.043, Florida Administrative Code states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

On May 29, 1991, we cancelled Swan Care Homes' certificate.

On May 22, 1992, Swan Care Homes filed a request for reinstatement of Pay Telephone Certificate No. 2512. In its request, Swan Care Homes expressed its apparent misunderstanding that Annual Reports were to be filed only if pay phones are operating. However, the Company did not explain its failure to respond to the Commission, nor its failure to pay outstanding fees owed the Commission.

We have adopted the position that annual reports are an essential requirement for retaining a PATS certificate. Furthermore, we will not certificate companies failing to comply with the requirements set forth in the Rules, and in previous dockets, we have denied applications for recertification where the companies' failure to file annual reports resulted in the cancellation of their respective certificates.

We have held that "companies disregarding rules regulating the pay telephone industry are not in the public's interest." Order No. 920294, issued May 15, 1992. Therefore, based on the

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foregoing, we have determined that Swan Care Homes' application for reinstatement of Pay Telephone Certificate No. 2512 shall be denied.

It is therefore

ORDERED by the Florida Public Service Commission that Swan Care Homes is hereby denied reinstatement of its certificate, No. 2512, to provide public pay telephone service. It is further

ORDERED that this docket shall closed if no protest is filed in accordance with the requirement set forth below.

By ORDER of the Florida Public Service Commission, this 13th day of July, 1992.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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.

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The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 3, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.