State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M

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DATE:

MAY 8, 2003

TO:

DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM:

DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS)

RE:

DOCKET NO. 030411-TI - COMPLIANCE INVESTIGATION OF PANTHER TELECOMMUNICATIONS CORPORATION FOR APPARENT VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA:

05/20/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030411.RCM

CASE BACKGROUND

- January 02, 2002 Panther Telecommunications Corporation (PTC) was granted Certificate No. 8002 to provide intrastate interexchange telecommunications in Florida.
- February 28, 2003 The Commission received a consumer complaint regarding a prepaid phone card branded as the No Connect Pre Paid Phone Card. The back of the phone card lists "P.T.C." as the service provider.
- March 10, 2003 Staff sent a certified letter (Attachment A) to PTC requesting that the company investigate the consumer complaint. A response to staff's inquiry was due on March 26, 2003.

DOCUMENT NUMBER-DATE

04166 MAY-88

FPSC-COMMISSION CLERK

> • March 31, 2003 - The certified mail "green card" receipt (Attachment B) was returned to the Commission indicating that PTC received staff's letter on March 26, 2003. Staff sent a second certified letter (Attachment C) to PTC, again requesting that the company investigate the consumer complaint and provide staff with a response by April 16, 2003.

- April 14, 2003 The second certified mail "green card" receipt (Attachment D) was returned to the Commission indicating that PTC received staff's second certified letter on April 9, 2003.
- April 28, 2003 Staff called the voice and facsimile telephone numbers for the company on file in the Master Commission Directory, however, both numbers are not in service.
- April 29, 2003 Staff opened this docket to address PTC's apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183 and 364.285, Florida Statutes. Further, staff's recommended penalty is consistent with penalties imposed upon other interexchange companies by the Commission in previous dockets for the same apparent rule violation. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$10,000 penalty on Panther Telecommunications Corporation for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, to be paid to the Florida Public Service Commission within fourteen calendar days after the issuance of the Consummating Order?

RECOMMENDATION: Yes. If PTC fails to timely protest the Commission's Order and fails to pay the \$10,000 penalty within fourteen calendar days after the issuance of the Consummating Order, Certificate No. 8002 should be cancelled and the company should also be required to immediately cease and desist providing interexchange telecommunications services, including prepaid calling services, in Florida. (Buys, W. Knight)

STAFF ANALYSIS: Rule 25-24.480, Florida Administrative Code, Records & Reports: Rules Incorporated, incorporates Rule 25-4.043, Florida Administrative Code, by reference into the rules applicable to interexchange companies. Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, 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.

As outlined in the case background, staff sent PTC two certified letters requesting written responses to staff's inquiries regarding a consumer complaint. The certified mail receipts for both letters indicate that the company received staff's letters. At the time of filing this recommendation, staff had not received any reply from PTC. In addition, staff attempted to call PTC using the telephone numbers provided by the company and listed in the Master Commission Directory. The facsimile number was disconnected and the voice number gave a fast busy. Staff has undertaken reasonable efforts to contact PTC and solicit a response, however, the company has not responded.

Furthermore, staff believes that PTC's failure to provide the required documentation is a "willful violation" of Rule 25-4.043,

Florida Administrative Code, in the sense intended by Section 364.285, Florida Statutes.

Pursuant to Section 364.285(1), Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes, or revoke any certificate issued by it for any such violation.

Section 364.285(1), Florida Statutes, however, does not define what it is to "willfully violate" a rule or order. Nevertheless, it appears plain that the intent of the statutory language is to penalize those who affirmatively act in opposition to a Commission order or rule. See, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 & n.4 (Fla. 1963); c.f., McKenzie Tank Lines, Inc. v. McCauley, 418 So.2d 1177, 1181 (Fla. 1st DCA 1982) (there must be an intentional commission of an act violative of a statute with knowledge that such an act is likely to result in serious injury) [citing Smit v. Geyer Detective Agency, Inc., 130 So.2d 882, 884 (Fla. 1961)]. Thus, a "willful violation of law" at least covers an act of purposefulness.

However, "willful violation" need not be limited to acts of commission. The phrase "willful violation" can mean either an intentional act of commission or one of omission, that is failing to act. See, Nuger v. State Insurance Commissioner, 238 Md. 55, 67, 207 A.2d 619, 625 (1965) [emphasis added]. As the First District Court of Appeal stated, "willfully" can be defined as:

An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Metropolitan Dade County v. State Department of Environmental Protection, 714 So.2d 512, 517 (Fla. 1st DCA 1998) [emphasis added]. In other words, a willful violation of a statute, rule or order is also one done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation. See, L. R.

<u>Willson & Sons, Inc. v. Donovan</u>, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982).

Thus, the failure of PTC to provide staff with a written response to its inquiry concerning a consumer complaint within fifteen days meets the standard for a "refusal to comply" and a "willful violation" as contemplated by the Legislature when enacting section 364.285, Florida Statutes.

Nor could PTC claim that it did not know that it had the duty to respond to staff's inquiry. "It is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833); see, Perez v. Marti, 770 So.2d 284, 289 (Fla. 3rd DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all telecommunication companies, like PTC, by virtue of their Certificate of Public Convenience and Necessity, are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

Thus, staff recommends that the Commission find that PTC has, by its actions and inactions, willfully violated Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, as incorporated into Rule 25-24.480, Florida Administrative Code, and impose a \$10,000 penalty on the company to be paid to the Florida Public Service Commission.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, this docket should be closed upon receipt of the payment of the penalty or the cancellation of the company's certificate. (W. Knight)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed administratively upon receipt of the payment of the penalty or cancellation of the company's certificate.

COMMISSIONERS: LILA A. JABER, CHAIRMAN J. TERRY DEASON BRAULIO L. BAEZ RUDOLPH "RUDY" BRADLEY

CHARLES M. DAVIDSON

STATE OF FLORIDA



DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Hublic Service Commission

March 10, 2003

Via Certified U.S. Mail

Mr. Efrain Rodriquez Panther Telecommunications Corporation 5255 N.W. 87th Avenue, Suite 101 Miami, Florida 33178-2125

Re: Customer Complaint Request No.520098T regarding the No Connect Pre Paid Phone Card.

Dear Mr. Rodriguez:

The Florida Public Service Commission received the enclosed complaint from Mr. Filpos regarding a pre paid phone card labeled *No Connect*. The back of the phone card lists P.T.C. as the service provider. It appears that your company, Panther Telecommunications Corporation, is the service provider for this phone card. Mr. Filpos claims that the phone card never worked and the customer service number is not in service. Please investigate this complaint, contact Mr. Filpos and provide me with a detailed written report, by March 26, 2003, that addresses the issues in Mr. Filpos complaint and confirms the customer has been contacted either by letter or phone.

Should you have any questions or wish to discuss this matter, please contact me.

Sincerely,

Dale R. Buys

Regulatory Analyst

Bureau of Service Quality

Voice: (850) 413-6536 Fax: (850) 413-6537

Email: dbuys@psc.state.fl.us

DRB Enclosure

Consumer Information	Florida Public Service	PSC Information
Name: LUIS FILPOS Business Name: Svc Address: 4855 NW 7 ST. APT. 202	Commission - Consumer Request 2540 Shumard Oak Boulevard Tallahassee, Florida 32399 850-413-6100	Assigned To: DALE BUYS Entered By: LLL Date: 02/28/2003 Time: 15:19
County: Dade Phone: (305)-448-7219	Utility Information Company Code: NA	Via:FAX Substitution Call Prelim Type:PREPAID CALL
City/Zip: Miami / 33126-	Company: P.T.C.	PO:
Account Number:	Attn.	Disputed Amt: 0.00
Caller's Name: LUIS FILPOS Mailing :: 4855 NW 7 ST. APT. 202	Response Needed From Company? Y Date Due: 03/26/2003 Fax: R	Supmntl Rpt Req'd: / / Certified Letter Sent: /
City/Zi , FL 33126- Can Be : E-Tracl per:	Interim Report Received: / / Reply Received: / / Reply Received Timely/Late: Informal Conf.: N	Certified Letter Rec'd: / / Closed by: Date: / / Closeout Type: Apparent Rule Violation: N

Please review the attached correspondence in which the customer reports the following: In February, 2003, the customer purchased a prepaid phone card for \$ 5. Customer states that the card never work. He tried to contact the customer service (1-800-431-4294), but that phone # is not in service.

Please investigate this issue, contact the customer and provide the Commission with a detailed written report that addresses the issues in the correspondence, and confirms the customer has been contacted either by letter or phone.

PLEASE NOTE** The information on this form is only a summary of the customer's concerns. information, important to this matter, may be contained in the correspondence.

Inquiry taken by Loyda Lopez

Request No. 520098T	Name	FILPOS , LUIS	Business Name
	1101110		pastiless watte

CAF FAX: 850/413-7168

TAF Email:pscreply@psc.state.fl.us

03/03/2003 Company does not appear to be certificated to sell prepaid calling cards. P.T.C. does not appear the Master Commission Directory. ACalhoun

3/6/2003 Case reassigned to the Division of Competitive Markets and Enforcement. P.Lowery

03/10/03: Letter drafted to send to Panther Telecommunications Corporation. Company response due by March 26, 2003. drbuys

DOCKET NO. 030411-TI DATE: May 8, 2003

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Attachment

atti hoyda Caso: 5-16 738-

Favor: minteres es que estas personas mo puedan seguir ongañamo no se pudo hablareon esta dargeta y en el serrició al eliente no se

English Instructions

1. Dial toll-free access number.

1-800-970-4712 2. When prompted enter your PIN number

Instrucciones en Español

1. Marque mimero de acceso gratis

1-800-970-4714 2. Cuando se le indique, ingrese su número de PIN

706 770 3039 3. For comestic calls, dial 1 + area code -

+ number.

4. For international calls, dial 011 + country code + cny code + number.

This card expires air months after its first use.

3. Para liamadas domésticas marque 1 + código de área + número.

4. Para liamedas internacionales marque 011 + código de país + código de cindad + número.

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Costomer Service/Servicio al Cheme: 1-800-431-4294 Network provided by: P. T. C.

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gracio LUISA. FISKS 48TT NW B 33/26 EE 305-448-72/A

SENDER: COMPLETE THIS SECTION	, COMPLETE THIS SECTION ON DELIVERY
 Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Received by (Please Print Clearly) C. Signature Agent Addressee D. Is delivery address different from item 1?
Mr. Efrain Rodriquez Panther Telecommunications Corp 5255 N.W. 87th Avenue, Suite 1	If YES√enter delivery address below: □ No
Miami F 39 178,2125	Service Type Certified Mail Express Mail Registered Return Receipt for Merchandise
	☐ Insured Mail ☐ C.O.D.
2. / 2002 801 8 888	4. Restricted Delivery? (Extra Fee) Yes
2. / 7002 0860 0001 1754 PS Form 3811, March 2001 Domestic Ret	4 4054
United States Postal Service	First-Class Mail Postage & Fees Paid USPS Permit No. G-10
Florida Public Service Commission Mr. Dale Buys 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850	2003 HAR 31 AM IO: 30 SIVISION OF SERVICES
	850 oz hilliahlahlah

COMMISSIONERS: LILA A. JABER, CHAIRMAN J. TERRY DEASON BRAULIO L. BAEZ RUDOLPH "RUDY" BRADLEY CHARLES M. DAVIDSON

STATE OF FLORIDA



DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Hublic Service Commission

March 31, 2003

Via Certified U.S. Mail

Mr. Efrain Rodriquez
Panther Telecommunications Corporation
5255 N.W. 87th Avenue, Suite 101
Miami, Florida 33178-2125

Re: Failure to respond to Commission staff inquiry into Customer Complaint Case regarding the No Connect Pre Paid Phone Card.

Dear Mr. Rodriquez:

On March 10, 2003, I mailed you the enclosed letter regarding the complaint from Mr. Filpos. A written reply from your company was due on March 26, 2003. As of today, I have not heard from you or any other company representative.

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires that 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. Currently, Panther Telecommunications Corporation appears to be in violation of this rule.

Please be aware that by Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 per day for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364.

Mr. Rodriquez, please provide me with the information requested in my enclosed letter, dated March 10, 2003, no later than **April 16, 2003**. If I do not receive a response from your company, a docket will be opened to initiate formal compliance proceedings.

Mr. Efrain Rodriquez Page 2 March 31, 2003

In addition, the "green card" certified mail receipt I received from my letter dated March 10, 2003, was stamped with "FORWARD" on the address. If your company has changed its mailing address, you need to update the new information with the Commission. If an update is necessary, please fill out the enclosed change information on regulated utility form. Please note that the information in the form must be printed and changes made by a company representative only, then signed, dated, and mailed to the Commission at the address shown on the form or faxed to (850) 413-7118.

Should you have any questions or wish to discuss this matter, please call me at 850-413-6536.

Sincerely,

Dale R. Buys Regulatory Analyst

Bureau of Service Quality

DRB

Enclosures (2)

DATE: May 8, 2003

COMMISSIONERS: LILA A. JABER, CHAIRMAN J. TERRY DEASON BRAULIO L. BAEZ RUDOLPH "RUDY" BRADLEY

CHARLES M. DAVIDSON

STATE OF FLORIDA



DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

March 10, 2003

Via Certified U.S. Mail

Mr. Efrain Rodriquez Panther Telecommunications Corporation 5255 N.W. 87th Avenue, Suite 101 Miami, Florida 33178-2125

Re: Customer Complaint Request No.520098T regarding the No Connect Pre Paid Phone Card.

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Should you have any questions or wish to discuss this matter, please contact me.

Sincerely,

Dale R. Buys

Regulatory Analyst

Bureau of Service Quality

Voice: (850) 413-6536 Fax: (850) 413-6537

Email: dbuys@psc.state.fl.us

DRB Enclosure

Apparent Rule Violation: N

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DOCKET DATE: N **PSC** Information Florida Public Service Consumer Information Commission - Consumer Request Assigned To: DALE BUYS Name: LUIS FILPOS 2540 Shumard Oak Boulevard Entered By: LLL Business Name: Tallahassee, Florida 32399 Date: 02/28/2003 850-413-6100 Svc Address: 4855 NW 7 ST. APT. 202 0 Time: 15:19 20 Via: FAX **Utility Information** County: Dade Phone: (305)-448-7219 Prelim Type: PREPAID CALL Company Code: NA City/Zip: Miami / 33126-PO: Company: P.T.C. Attn. Account Number: 0.00 Disputed Amt: Caller's Name: LUIS Response Needed From Company? y FILPOS Supmntl Rpt Req'd: Date Due: 03/26/2003 Mailing Address: 4855 NW 7 ST. APT. 202 Certified Letter Sent: / Fax: Certified Letter Rec'd: / Interim Report Received: / / City/Zip: FL 33126-Closed by: Reply Received: Can Be Re Date: Reply Received Timely/Late: Closeout Type: E-Tracki: Informal Conf.: N r:

Please review the attached correspondence in which the customer reports the following: In February, 2003, the customer purchased a prepaid phone card for \$ 5. Customer states that the card never work. He tried to contact the customer service (1-800-431-4294), but that phone # is not in service.

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PLEASE NOTE** The information on this form is only a summary of the customer's concerns. Additional information, important to this matter, may be contained in the correspondence.

Inquiry taken by Loyda Lopez

Request No. 520098T	Name	FILPOS , LUIS	Business Name	

'AF FAX: 850/413-7168

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'n

AF Email:pscreply@psc.state.fl.us

13/03/2003 Company does not appear to be certificated to sell prepaid calling cards. P.T.C. does not appear in the Master Commission Directory. ACalhoun

1/6/2003 Case reassigned to the Division of Competitive Markets and Enforcement. P.Lowery

Company response due by March)3/10/03: Letter drafted to send to Panther Telecommunications Corporation. 26, 2003. drbuys

Attachment

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DOCKET NO DATE: May

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030411 8, 2003

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Business Name FILPOS , LUIS Request No. 520098T Name

PAGE NO:

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att-Loyda Caso: 516 738- 100

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English Instructions

l. Dial toll-free access number.

1-800-970-4712

Instrucciones en Español

1. Marque mimero de acceso gratis: 1-800-970-4714 Mando se le indique, imprese se núm

3. Para llamadas domésticas marque 1 + código

4. For international calls, dial 011 + country code + city code + Demober."

4. Para Hamadas internacionales marque 011 + código de país + código de ciudad + primero.

Esta tarjeta explina seia tatoles después de pr

Costomer Service/Servicio al Cliente: 1-800-431-4264

Conurol #

81894962



muchas 900010 LUISA. FILPS 48TT NW B #202 30J-448-9219

TO: FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0870

RE: CHANGE OF INFORMATION ON REGULATED UTILITY

Official Company Name: (As appears on certificate)	Mailing Name: (Must be part of official company name; 58 characters or less)
Certificate No.: (A separate form must be used for each certificate number)	Physical Location:
Attention Line: (Person to whom all official FPSC correspondence is addressed)	Mailing Address:
Liaison Off	icer(s)
Officer No. 1: Name: Title: Telephone Number: Fax No.: e-mail Address:	Officer No. 2: Name: Title: Telephone Number: Fax No.: e-mail Address:
Company Web Address:	
SUBMITTED BY COMPANY REPRESENTATIVE:	Name: Title: Telephone No.:
DATE:	

DOCKET NO. 030411-TI

DATE: May 8, 2003

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Attachment D

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SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
 Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Received by (Please Print Clearly) B. Date of Delivery C. Signature Agent Addressee
1 ^====	nt from item 1? ☐ Yes Iress below: ☐ No
Mr. Efrain Rodriquez Panther Telecommunications Corp 5255 N.W. 87 th Avenue, Suite 101 Miami, FL 33178-2125). :
٠.	turn Receipt for Merchandise
	4. Restricted Delivery? (Extra Fee)
7002 0860 0001 1754	4764
PS Form 3811, March 2001 Domestic Re	turn Receipt . 102595-01-M-1424
United States Postal Service	First-Class Mail Postage & Fees Paid USPS Permit No. G-10
Florida Public Service Commission Mr. Dale Buys 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850	2003 APR 14 PN 10: 32 SHALL SERVICES COMPETITIVE SERVICES

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