

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Saluda Networks Incorporated for apparent violation of Rule 25-22.032(6)(b), F.A.C., Customer Complaints.

DOCKET NO. 050682-TX  
ORDER NO. PSC-05-1164-PAA-TX  
ISSUED: November 22, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
LISA POLAK EDGAR  
ISILIO ARRIAGA

NOTICE OF PROPOSED AGENCY ACTION ORDER  
IMPOSING PENALTY FOR APPARENT VIOLATION  
OF RULE 25-22.032(6)(B)

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

I. CASE BACKGROUND

Saluda Networks Incorporated (Saluda) is a certificated competitive local exchange telecommunications company based in Miami, Florida. The company provides competitive local exchange telecommunications services in Florida.

On July 29, 2005, we received three customer complaints against Saluda. According to the complainants, their local telephone service was disconnected without notice. The customers paid in advance for their telephone service, however, when their services were disconnected the company did not refund their money. Our staff made several attempts to obtain a response from the company, however, the company never responded. On August 17, 2005, we received a fourth complaint regarding improper billing. According to the fourth complainant, the customer switched local service providers and paid the final bill from Saluda, but the company continued to bill the customer for services. The company was notified of the complaint, via facsimile sent by our staff in the Division of Regulatory Compliance & Consumer Assistance (RCA). A response was due by September 8, 2005. To date, the company has not responded.

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After receiving the complaints, our staff learned that the company may no longer be in business. When our staff called the telephone number listed for the company in the Master Commission Directory, a recording stated that due to the administrative decision of one of the company's service providers that some customers were experiencing a temporary disconnection of service and that Saluda was trying to get service restored to its customers. Several messages were left requesting that someone from the company contact our staff; however, the company did not return the calls.

A certified letter dated September 1, 2005, was sent to the company. The letter again notified the company of the customer complaints and requested that the company provide a response. The letter also advised the company to refund its customers for services which the company received payment but did not provide. According to the United States Postal Service's website, the letter was forwarded to a different address. To date, the letter has not been claimed.

We are vested with jurisdiction over this matter pursuant to Sections 364.285 and 364.337, Florida Statutes.

## II. DISCUSSION OF ISSUES

Pursuant to Section 364.285, Florida Statutes, we may impose a penalty or cancel a certificate if a company refuses to comply with our rules. According to Rule 25-22.032(6)(b), Florida Administrative Code, Customer Complaints, a company shall provide our staff with a written response to a customer complaint within 15 working days after our staff sends the complaint to the company. As stated in the case background, we received four customer complaints against Saluda Networks Incorporated. Saluda Networks Incorporated has yet to respond to the customer complaints, which is in apparent violation of Rule 25-22.032(6)(b), Florida Administrative Code.

Pursuant to Section 364.285(1), Florida Statutes, the we are 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 this Commission, or any provision of Chapter 364, Florida Statutes.

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 our orders or rules. 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. 1<sup>st</sup> 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 commission or an intentional act.

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

Thus, Saluda’s failure to respond to the customer complaints meets the standard for a “refusal to comply” and “willful violations” as contemplated by the Legislature when enacting Section 364.285, Florida Statutes.

“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. 3<sup>rd</sup> DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all competitive local exchange telecommunications companies, like Saluda are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

Further, the amount of the proposed penalty is consistent with penalties previously imposed by this Commission upon other telecommunications companies that have failed to respond to consumer complaints.

### III. DECISION

We hereby find that Saluda has, by its actions and inactions, willfully violated Rule 25-22.032(6)(b), Florida Administrative Code, and impose a penalty in the amount of \$10,000 per apparent violation, for a total of \$40,000 against Saluda for four apparent violations.

This Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by our decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13) (b), Florida Statutes, any issues not in dispute should be deemed stipulated. If Saluda fails to timely file a protest and request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If Saluda fails to pay the penalty within fourteen (14) calendar days after the issuance of the Consummating Order, the company’s Certificate No. 8376 should be

cancelled. If Saluda's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company shall be required to immediately cease and desist providing telecommunications services in Florida. This docket shall be closed administratively upon either receipt of the payment of the penalty or upon the cancellation of the company's certificate.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Saluda Networks Incorporated is hereby penalized in the amount of \$10,000 per apparent violation, for a total of \$40,000 for four apparent violations of Rule 25-22.032(6)(b), Florida Administrative Code, Customer Complaints. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall be closed administratively upon either receipt of the payment of the penalty or upon the cancellation of the company's certificate.

By ORDER of the Florida Public Service Commission this 22nd day of November, 2005.



BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 13, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.