

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of local exchange Certificate No. 8511, issued to Optical Telecommunications, Inc. d/b/a HControl Corporation d/b/a SH Services LLC, for apparent fourth-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 20210078-TX
ORDER NO. PSC-2021-0236-PAA-TX
ISSUED: June 30, 2021

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
ANDREW GILES FAY
MIKE LA ROSA
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED AGENCY ACTION ORDER
IMPOSING PENALTY AND COLLECTION COST
FOR VIOLATION OF SECTION 364.336, FLORIDA STATUTES,
AND RULE 25-4.0161, FLORIDA ADMINISTRATIVE CODE,
REGARDING REGULATORY ASSESSMENT FEES

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 (F.A.C.).

Case Background

Optical Telecommunications, Inc. d/b/a HControl Corporation d/b/a SH Services LLC (SH Services or Company) is a regulated telecommunications company located in Miami, Florida. The Company's application for a competitive local exchange telecommunications services certificate was approved by the Florida Public Service Commission (Commission) on August 11, 2004, by Order No. PSC-04-0787-PAA-TX. Pursuant to Section 364.336, Florida Statutes (F.S.), certificate holders must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate was active during any portion of the calendar year.

Pursuant to Section 350.113(4), F.S., RAF forms are mailed to regulated companies for the period January 1 through December 31, at least 45 days prior to the date that payment of the fee is due. Pursuant to Rule 25-4.0161(2), Florida Administrative Code (F.A.C.), the RAF form and applicable fees are due to the Commission by January 30 of the subsequent year.

In keeping with Commission rules and statutes, 2020 RAF forms were mailed on December 9, 2020, for the period January 1, 2020, through December 31, 2020. The RAF form and applicable fees were due on or before January 30, 2020.

On February 22, 2021, we mailed a letter to the Company informing it that, according to our records, its RAF payment had not yet been received, and was past due. The letter also informed the Company that payment would need to be postmarked within 15 calendar days of receipt of the notice, as evidenced by the certified mail receipt, and, if not received by that date, a RAF rule violation penalty of \$500, \$1,000, or \$2,000, is automatically imposed, depending on the number of previous dockets opened against the entity for violation of the RAF rule.

SH Services had three prior dockets opened for violation of Rule 25-4.0161, F.A.C. – Docket No. 20080469-TX, Docket No. 20090201-TX, and Docket No. 20100207-TX. Because this docket was opened for an apparent fourth violation by the Company of Rule 25-4.0161, F.A.C., our staff was required to file a recommendation addressing the fourth violation for our consideration and further action.

On April 21, 2021, we received a partial payment from SH Services which included the RAF and associated delinquent RAF penalty and interest, along with a portion of the additional rule violation penalty. On May 20, 2021, the Commission received the remaining balance owed.

The Commission has jurisdiction over this matter pursuant to Sections 350.113, 364.336, and 364.285, F.S.

Review and Decision

This Commission has opened three prior dockets, in 2008, 2009, and 2010, to address the same rule violation by SH Services. In all three dockets, the Company's failure to pay past due RAFs by the delinquency notice deadlines resulted in the Company paying not only the delinquent RAFs, but also the statutory late payment penalties and interest amounts, and additional rule violation penalties per Rule 25-4.0161(12), F.A.C.

Due to the failure to timely pay the past due RAFs, SH Services consequently paid an additional rule violation penalty of \$500 to resolve Docket No. 20080469-TX, \$1,000 to resolve Docket No. 20090201-TX, and \$2,000 to resolve Docket No. 20100207-TX, along with all RAF amounts, statutory penalties, and interest charges. These actions resulted in the Company's certificate remaining active, although it would have otherwise been cancelled administratively.

For a company's fourth-time failure to pay the RAF, Rule 25-4.0161(13), F.A.C., provides that Commission staff shall file a recommendation for our consideration and further action. Pursuant to this rule, we have authority, and also discretion, to either cancel the

Company's certificate, or waive the cancellation if a penalty, plus the outstanding RAF, including accrued statutory late payment charges, are paid in full. While the Company has had three prior violations of this Rule, the most recent violation for RAF non-compliance occurred over 11 years ago, in Docket No. 20100207-TX.

Rule 25-4.0161, F.A.C., does not specify a penalty amount for a fourth rule violation. The rule prescribes a penalty of \$500, \$1,000, or \$2,000, depending on the number of previous violations. The penalty amount per the rule doubles each time a subsequent RAF rule violation occurs up to three violations. Since this is the Company's fourth RAF rule violation, our staff recommended that an appropriate penalty is \$4,000, which equates to a doubling of the \$2,000 penalty amount for a third RAF rule violation.¹ Most recently, this penalty amount was approved by this Commission, in Docket No. 20200141-TA.² Pursuant to Section 364.285, F.S., we have authority to penalize up to \$25,000.

On April 21, 2021, we received a partial RAF payment from SH Services in the amount of \$1,744. Our staff spoke to the Company by telephone on April 26, 2021, and by email on April 29, 2021, and May 11, 2021. On each occasion the Company was responsive and expressed its intent to pay the appropriate amount owed in an effort to keep the Certificate active. On May 3, 2021, we received an additional partial payment in the amount of \$617.34, and on May 20, 2021, we received the Company's remaining balance in the amount of \$2,000.³

Pursuant to Section 350.113(4), F.S., five percent of the 2020 RAF amount due is imposed as a penalty for each 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent.⁴ Additionally, an interest rate of 12 percent per annum is also applied to any delinquent amounts. Thus, at the time of the Company's April 21, 2021 payment, an estimated 2020 RAF amount of \$600, plus a late penalty in the amount of \$90 (5 percent x 3 months x \$600), plus accrued interest in the amount of \$18, resulted in a total amount due of \$708.⁵ This amount, added to the staff-recommended fourth violation penalty amount of \$4,000, including cost of collections, resulted in a total amount due to the Commission of \$4,708. The amounts paid by SH Services in April and May 2021, as described above, in addition to the carryover credits from 2019 and 2020, equal \$4,708, leaving the Company with a zero balance.

Considering that the Company has paid the outstanding RAFs and penalties prior to our staff filing its recommendation in this docket, and three times previously, as well as taking into

¹Order No. PSC-08-0796-PAA-TI, issued December 3, 2008, in Docket No. 20080349-TI, *In re: Compliance investigation of IXC Registration No. TJ008, issued to Executive Business Centers, Inc., for apparent fourth-time violation of Section 364.336, F.S. and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.*

²Order No. PSC-2020-0203-PAA-TA, issued June 24, 2020, in Docket No. 20200141-TA, *In re: Compliance investigation of AAV Certificate No. 7790, issued to A.SUR Net, Inc., for apparent fourth-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.*

³SH Services had two credits that were applied to the 2020 RAF past due amount. The credits were \$215.41 for 2019 RAF overpayment, and \$131.25 for 2018 RAF overpayment, totaling \$346.66.

⁴Section 350.113(4), F.S., provides a prorated penalty amount for the first month of delinquency; however, this provision has no effect on this case since the delinquency period has been longer than one month.

⁵Staff notes that the 2019 RAF amount is based on the Company's 2018 annual revenues.

account the extended amount of time elapsed since its last RAF rule violation, SH Services' certificate shall not be cancelled.

Upon review, we acknowledge the appropriate 2020 RAF, including accrued statutory late payment charges, along with the \$4,000 penalty, for a total amount due of \$4,708. We further acknowledge that SH Services has paid this amount in full.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a penalty and a cost of collection, together totaling \$4,000 is hereby imposed on Optical Telecommunications, Inc. d/b/a HControl Corporation d/b/a SH Services LLC. The Company's tariff shall not be cancelled and its name shall not be removed from the register. It is further,

ORDERED that this Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, F.A.C., within 21 days of the issuance of the Proposed Agency Action Order. Thereupon, this docket shall be closed administratively either upon acknowledgment that Optical Telecommunications, Inc. d/b/a HControl Corporation d/b/a SH Services LLC has paid in full the appropriate 2020 RAF, including accrued statutory late payment charges, along with the \$4,000 penalty, for a total amount due of \$4,708, or upon cancellation of the Company's local exchange certificate and removal of its name from the register.

By ORDER of the Florida Public Service Commission this 30th day of June, 2021.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
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Tallahassee, Florida 32399
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 21, 2021.

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.