

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation
of Panther Telecommunications
Corporation for apparent
violation of Rule 25-4.043,
F.A.C., Response to Commission
Staff Inquiries.

DOCKET NO. 030411-TI
ORDER NO. PSC-03-0688-PAA-TI
ISSUED: June 9, 2003

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING PENALTIES

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

On January 02, 2002, Panther Telecommunications Corporation
(PTC) was granted Certificate No. 8002 to provide intrastate
interexchange telecommunications in Florida. On February 28, 2003,
we 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. Our staff sent
a certified letter on March 10, 2003 to PTC requesting that the
company investigate the consumer complaint. A response to our
staff's inquiry was due on March 26, 2003.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On March 31, 2003, the certified mail "green card" receipt was returned to the Commission indicating that PTC received our staff's letter on March 26, 2003. Our staff sent a second certified letter to PTC, again requesting that the company investigate the consumer complaint and provide our staff with a response by April 16, 2003. The second certified mail "green card" receipt was returned to the Commission on April 14, 2003, indicating that PTC received our staff's second certified letter on April 9, 2003. On April 28, 2003, our 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.

On April 29, 2003, this docket was opened to address PTC's apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. 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.

II. ANALYSIS

As outlined in the case background, our staff sent PTC two certified letters requesting written responses to our staff's inquiries regarding a consumer complaint. The certified mail receipts for both letters indicate that the company received the letters. Our staff has yet to receive any reply from PTC. Our staff has undertaken reasonable efforts to contact PTC and solicit a response, however, the company has not responded.

Furthermore, we find 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, 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 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. Willson & Sons, Inc. v. Donovan, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982).

Thus, the failure of PTC to provide our 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 our 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, we 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.

This Proposed Agency Action Order 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Panther Telecommunications Corporation is hereby penalized in the amount of \$10,000 for failure to comply with Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. It is further

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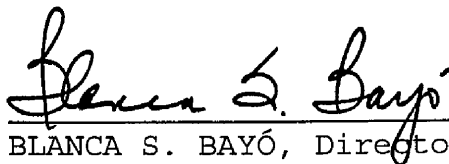
ORDERED that the provisions of this order be issued as a proposed agency action and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of 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 if the penalties are not received within 14 calendar days after issuance of the Consummating Order, the amount shall be forwarded to the Office of the Comptroller for collection. It is further

ORDERED that if Panther Telecommunications Corporation 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.

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

By ORDER of the Florida Public Service Commission this 9th Day of June, 2003.



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

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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 June 30, 2003.

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.