

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation  
of United States  
Telecommunications, Inc. d/b/a  
Tel Com Plus for apparent  
violation of Rule 25-  
22.032(5)(a), F.A.C., Customer  
Complaints, and Rule 25-4.0161,  
F.A.C., Regulatory Assessment  
Fees; Telecommunications  
Companies.

DOCKET NO. 030618-TX  
ORDER NO. PSC-03-1101-PAA-TX  
ISSUED: October 2, 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 FINE ON UNITED STATES TELECOMMUNICATIONS, INC.  
d/b/a TEL COM PLUS

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.

CASE BACKGROUND

On May 26, 1998, United States Telecommunications, Inc. d/b/a  
Tel Com Plus (Tel Com Plus) obtained Florida Public Service  
Commission competitive local exchange telecommunications company  
(CLEC) Certificate No. 5586.

DOCUMENT NUMBER-DATE

09539 OCT-28

FPSC-COMMISSION CLERK

DOCKET NO. 030618-TX  
ORDER NO. PSC-03-1101-PAA-TX  
PAGE 2

On December 20, 1999, our staff opened Docket No. 991970-TX to address the company's failure to pay Regulatory Assessment Fees (RAFs) for the 1998 calendar year, a violation of Rule 25-4.0161, Florida Administrative Code (F.A.C.), Regulatory Assessment Fees; Telecommunications Companies. On July 7, 2000, in Docket No. 991970-TX, this Commission issued Order No. PSC-00-1236-AS-TX in which we accepted the company's settlement offer to resolve its violation of Rule 25-4.0161, Florida Administrative Code. In its settlement offer, the company proposed to pay future RAFs in a timely manner, and contribute \$100 to the State General Revenue Fund. On August 17, 2000, we received the company's \$100 settlement contribution and Docket No. 991970-TX was closed on August 21, 2000.

On April 4, 2001, Tel Com Plus paid \$164.27 towards its 2000 RAF. However, a total RAF of \$369.61 was due on January 30, 2001. The company failed to pay in full and in a timely manner. The company still owes an outstanding balance in the amount of \$246.40 for its 2000 RAF. On February 8, 2002, Tel Com Plus reported gross intrastate revenue of \$1,510,593 for the calendar year 2001 on its 2001 Regulatory Assessment Fee (RAF) return.

On March 17 & 27, 2003, our staff received two customer complaints regarding the billing and service provided by Tel Com Plus. On April 30, 2003, our staff sent the company a certified letter advising the company that a company response to the customer complaints has not been received and Tel Com Plus was potentially at risk of being penalized or having its certificate revoked. The certified mail return receipt indicates that the company received the letter on May 5, 2003. On June 16, 2003, our staff sent the company a second certified letter requesting that the company investigate the customer complaint and provide our staff with a written response by June 30, 2003. The certified mail return receipt indicates that the company received the letter on June 23, 2003. On August 12, 2003 our staff changed the title on this docket to add the apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.

On December 12, 2003 our staff mailed the 2002 Regulatory Assessment Fee (RAF) return notice to the company. On February 20, 2003 our staff mailed a second notice to the company advising it that its 2002 RAF is delinquent. The certified mail receipt indicates that the company received the letter on February 26,

2003. On April 11, 2003, our staff mailed a letter to the company advising that Commission records did not show that the company's 2002 RAF payment had been received. The letter also stated that a docket would be opened if the 2002 RAF, plus penalty and interest, was not received by April 30, 2003.

On July 3, 2003 our staff mailed a final letter to the company informing it that its 2002 RAF has not been received and that a docket would be established for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. On July 15, 2003, this docket was opened to address Tel Com Plus's apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285, 364.336, and 364.337, Florida Statutes.

#### FINDINGS

Tel Com Plus has been notified by two certified letters of the customer complaints received by this Commission. The certified mail receipts indicate that the company received both of them. As of September 4, 2003, Tel Com Plus has not responded to the customer complaints in apparent violation of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, which states:

The staff member will notify the company of the complaint and request a response. The company shall provide its response to the complaint within fifteen (15) working days. The response shall explain the company's actions in the disputed matter and the extent to which those actions were consistent with applicable statutes and regulations. The response shall also describe all attempts to resolve the customer's complaint.

We find that Tel Com Plus's failure to provide the required responses to the customer complaints is a "willful violation" of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, in the sense intended by Section 364.285, Florida Statutes.

Pursuant to Section 364.285(1), Florida Statutes, this 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 this 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. 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 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. 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, the failure of Tel Com Plus to provide our staff with written responses to the consumer complaints within fifteen working 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 Tel Com Plus claim that it did not know that it had the duty to respond to staff's inquiries. "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 telecommunication companies, like Tel Com Plus, 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).

Our findings on this issue are consistent with this Commission's previous decision for similar violations in Docket No. 010206-TI, Initiation of show cause proceedings against Telquest Communications, Inc. d/b/a Advantage Plus Telecommunications, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

Thus, we find that Tel Com Plus has, by its actions and inactions, willfully violated Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, and impose a penalty of \$10,000 per apparent violation, for a total of \$20,000 on the company to be paid to the Florida Public Service Commission within fourteen calendar days after the issuance of the Consummating Order.

According to our records, Tel Com Plus has not paid its 2002 RAFs, plus statutory penalty and interest charges. Our staff wrote Tel Com Plus in an attempt to bring the company into compliance with the RAF rule. No payment or written response was received; therefore, it appears Tel Com Plus has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, Rules Incorporated, and has not requested cancellation of its certificate in compliance with Rule 25-24.820(2), Florida Administrative Code, Revocation of a

DOCKET NO. 030618-TX  
ORDER NO. PSC-03-1101-PAA-TX  
PAGE 6

Certificate. Further, pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay RAFs, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

In the company's settlement offer in Docket No. 991970-TX to resolve this same rule violation for not paying its 1998 RAFs, the company indicated it would pay future RAFs in a timely manner. Whereas this is the second time that the company has violated the RAF rule, we find that a penalty of \$1,000 is appropriate and is consistent with this Commission's previous decisions for a second violation of the RAF rule.

We find that Tel Com Plus's apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, has been "willful" in the sense intended by Section 364.285, Florida Statutes, and pursuant to Section 364.285, Florida Statutes, this Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with any lawful rule of this Commission.

Accordingly, we find that if Tel Com Plus fails to timely protest this Commission's Order and fails to pay the \$1,000 penalty and the Regulatory Assessment Fees, including statutory penalty and interest charges, within fourteen calendar days after the issuance of the Consummating Order, Certificate No. 5586 shall be canceled and the company shall also be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida. If the Regulatory Assessment Fees, including statutory penalty and interest charges, are not received in accordance with this Commission's Order, the collection of the past due fees should be referred to the Department of Financial Services for further collection efforts.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that United States Telecommunications, Inc. d/b/a Tel Com Plus is hereby fined \$20,000 for violation Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints. The penalty shall be paid within 14 calendar days after the issuance of the Consummating Order to the

DOCKET NO. 030618-TX  
ORDER NO. PSC-03-1101-PAA-TX  
PAGE 7

Florida Public Service Commission pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that United States Telecommunications, Inc. d/b/a Tel Com Plus is hereby fined \$1,000 for failure to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code, Rules Incorporated. The penalty shall be paid within 14 calendar days after the issuance of the Consummating Order to the Florida Public Service Commission pursuant to Section 364.285(1), Florida Statutes. 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 in the event this Order becomes final, this docket shall be closed administratively upon receipt of penalty payment or referral to the Department of Financial Services for collection.

By ORDER of the Florida Public Service Commission this 2nd Day of October, 2003.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

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DOCKET NO. 030618-TX  
ORDER NO. PSC-03-1101-PAA-TX  
PAGE 8

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 October 23, 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.