

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of PHI  
Telecommunications Corporation for apparent  
violation of Sections 364.02 and 364.04,  
Florida Statutes.

DOCKET NO. 040162-TI  
ORDER NO. PSC-04-0424-PAA-TI  
ISSUED: April 26, 2004

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER IMPOSING PENALTY

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.

Pursuant to Section 364.285, Florida Statutes, the Commission may impose a penalty if a company refuses to comply with the Commission rules or any provision of Chapter 364, Florida Statutes. Section 364.02(13), Florida Statutes, states in pertinent part:

...Each intrastate interexchange telecommunications company shall continue to be subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285, 364.501, 364.603, and 364.604, shall provide the commission with such current information as the commission deems necessary to contact and communicate with the company...

Section 364.04(1), Florida Statutes, states:

Upon order of the commission, every telecommunications company shall file with the commission, and shall print and keep open to public inspection, schedules showing the rates, tolls, rentals, contracts, and charges of that company for service to be performed within the state.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

From August 6, 2003, to February 12, 2004, our staff received two complaints filed against PHI. After receiving the first complaint, our staff determined that PHI was providing intrastate interexchange telecommunications services through the provisioning of prepaid calling card services in Florida and had not registered or filed a tariff with this Commission. Our staff made several attempts to notify PHI of its requirement to register and file a tariff with this Commission and to obtain resolution of the customer complaint. Between August 6, 2003, and December 30, 2003, several letters were sent to the company, via certified mail, first class mail, and facsimile. The certified letters were mailed to PHI's post office box address as well as its physical address, but were later returned marked unclaimed by the United States Postal Service.

Since the initial letter that was sent to PHI's post office box address was never returned, our staff believes that the company did receive the letter. In addition, our staff also faxed two letters to the company and both of the Facsimile Transmission Verification Reports indicated that the letters were transmitted successfully. Therefore, our staff believes that PHI has been adequately notified of its requirement to register and file a tariff with this Commission and has been given sufficient time to do so.

We find that PHI's failure to provide this Commission with current contact information and file a tariff are "willful violations" of Sections 364.02 (13) and 364.04, Florida Statutes, 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. 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 Smith 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).

"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 PHI are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

This Commission is vested with jurisdiction over this matter pursuant to Sections 364.02(13), 364.04, and 364.285, Florida Statutes. Therefore, we find it appropriate to impose a penalty upon PHI Telecommunications Corporation in the amount of \$25,000 for the company's apparent violation of Sections 364.02 and 364.04, Florida Statutes. If PHI fails to timely file a protest and request a Section 120.57, Florida Statutes, hearing, the facts shall be deemed admitted, the right to a hearing waived, and the penalty shall be deemed assessed. If payment of the penalty is not received within fourteen (14) calendar days after the issuance of the Consummating Order, the penalty shall be referred to the Department of Financial Services for collection and the company shall be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. This docket shall be closed administratively upon receipt of: 1.) The company's tariff; 2.) The company's current contact information; and 3.) The payment of the penalty, or 4.) Upon the referral of the penalty to the Department of Financial Services.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that PHI Telecommunications Corporation is hereby assessed a penalty of \$25,000 for each apparent violation of Sections 364.02(13) and 364.04, 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

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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 should PHI Telecommunications Corporation fail to timely protest this Order, the facts shall be deemed admitted, the right to a hearing waived, and the penalty shall be deemed assessed. It is further

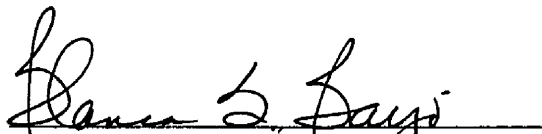
ORDERED that any protest must identify with specificity the issues in dispute. In accordance with Section 120.80(13)(b), Florida Statutes, issues not in dispute will be deemed stipulated. It is further

ORDERED that should PHI Telecommunications Corporation fail to timely protest this Order, payment of the \$25,000 penalty must be received within fourteen calendar days after the issuance of the Consummating Order. It is further

ORDERED that if this Order is not protested and the penalty is not received within fourteen calendar days of the issuance of the Consummating Order, the penalty shall be referred to the Department of Financial Services for further collection efforts and the company shall be required to cease and desist providing intrastate interexchange telecommunications services in Florida. It is further

ORDERED that if this Order is not timely protested, this Docket shall be closed administratively upon: 1) receipt of the company's tariff; 2) receipt of the company's current contact information; and 3) receipt of the \$25,000 penalty payment; or 4) referral of the penalty to the Department of Financial Services for further collection efforts.

By ORDER of the Florida Public Service Commission this 26th day of April, 2004.

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

(SEAL)

JPR

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 May 17, 2004.

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.