

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Global
Crest Communications, Inc. d/b/a Dimensions
for apparent violation of Section 364.02(13),
Florida Statutes, Definitions.

DOCKET NO. 040210-TI
ORDER NO. PSC-04-0528-PAA-TI
ISSUED: May 24, 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, this Commission may impose a penalty or cancel a certificate if a company refuses to comply with 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....

Global Crest Communications, Inc. d/b/a Dimensions (Dimensions) is a registered interexchange telecommunications company (IXC), based in Miami, Florida that provides intrastate interexchange telecommunications services in Florida through prepaid calling card services. To date, Dimensions has not communicated with our staff or replied to the customer complaints, which is in violation of Section 364.02(13), Florida Statutes. Certified mail receipts

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were returned by the United States Postal Service indicating that the company received the certified letters that were sent by our staff. Therefore, we find that the company has been adequately notified of its obligation to reply to the complaints and has been provided sufficient time to contact and communicate with our staff.

We find that Dimension's failure to communicate with Commission staff is a "willful violation" of Section 364.02(13), 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. 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, Dimension's failure to communicate with Commission staff 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. 3rd DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all intrastate interexchange telecommunication companies, like Dimensions, 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 these matters pursuant to Sections 364.02 and 364.285, Florida Statutes. Further, the amount of the proposed penalty is consistent with penalties previously imposed by this Commission upon other intrastate interexchange telecommunications companies that failed to respond to customer complaints. Therefore, we find it appropriate to impose a penalty upon Global Crest Communications, Inc. d/b/a Dimensions of \$10,000 per apparent violation, for a total of \$60,000, for six apparent violations of Section 364.02(13), Florida Statutes, Definitions.

This Order will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by this Commission's 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 Dimensions fails to timely file a protest and to request a Section 120.57, Florida Statutes, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If Dimensions fails to pay the penalty within fourteen (14) calendar days after the issuance of the Consummating Order, Dimensions' tariff shall be cancelled and Registration Number TJ437 should be removed from the register 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 either the receipt of the payment of the penalty, or upon cancellation of the company's tariff and removal of Registration Number TJ473 from the register.

It is therefore,

ORDERED by the Florida Public Service Commission that Global Crest Communications, Inc. d/b/a Dimensions is hereby assessed a penalty of \$10,000 per apparent violation, for a total of \$60,000, for six apparent violations of Section 364.02(13), 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

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ORDERED that should Global Crest Communications, Inc. d/b/a Dimensions 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

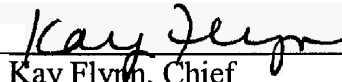
ORDERED that should Global Crest Communications, Inc. d/b/a Dimensions fail to timely protest this Order, payment of the \$60,000 penalty must be received within fourteen calendar days after the issuance of the Consummating Order. It is further

ORDERED that if this Order is not timely protested, this Docket shall be closed administratively upon either the receipt of the payment of the penalty, or upon cancellation of the company's tariff and removal of Registration Number TJ473 from the register.

By ORDER of the Florida Public Service Commission this 24th day of May, 2004.

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

By:



Kay Flynn, Chief
Bureau of Records

(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 June 14, 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.