

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Inter Con | DOCKET NO. 041314-TI
Communications for apparent violation of | ORDER NO. PSC-05-0152-PAA-TI
Sections 364.02 and 364.04, F.S. | ISSUED: February 8, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER
IMPOSING PENALTY FOR APPARENT VIOLATION OF
SECTIONS 364.02 (13) AND 364.04, FLORIDA STATUTES

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 September 8, 2004, our staff received a complaint filed against Inter Con Communications (ICC). After receiving the complaint, our staff determined that ICC was providing intrastate interexchange telecommunications services in Florida through the provisioning of prepaid calling card services and had not provided this Commission with the company's current contact information or a tariff. Our staff contacted ICC using the customer service telephone number listed on the calling card and was given the mailing address and the fax number for the company. A letter dated September 13, 2004, was sent to ICC. The letter requested that the company investigate the complaint, provide this Commission with the company's current contact information, and file a tariff. A copy of the letter was also successfully sent to the company via facsimile.

On September 22, 2004, our staff received a response from Orion Telecommunications Corp (Orion) regarding the customer complaint that was filed against ICC. The address listed on the company letterhead for Orion was the same address our staff had obtained for ICC. Orion agreed to issue the customer a full refund. However, the company did not respond to ICC's requirements to provide this Commission with the company's current contact information and a

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tariff. Our staff later contacted Orion and was informed that management would address ICC's requirements and would contact our staff at a later date concerning this issue.

On October 6, 2004, after not receiving a response, our staff sent a letter to Orion via certified mail. The letter addressed our staff's concerns that Orion may be providing prepaid calling card services under ICC's name. Our staff informed Orion that if the company was providing services using ICC's name, it would need to either add ICC as a d/b/a for Orion or register ICC as an interexchange telecommunications company with this Commission and file a tariff. A copy of the letter was also successfully sent to the company via facsimile. Our staff determined that ICC and Orion shared the same fax number. The deadline for the company to respond to our staff's letter was October 26, 2004. The certified mail receipt, indicating that the company did receive the letter, was returned to our staff on October 21, 2004, by the United States Postal Service.

II. Analysis

To date, ICC has not provided our staff with the company's current contact information or filed a tariff with this Commission, rendering the company in apparent violation of Sections 364.02(13) and 364.04, Florida Statutes. We find that the company has been adequately notified of its requirements and has been provided with sufficient time to meet those requirements.

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a certificate if a company refuses to comply with our 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.

We find that ICC's failure to provide this Commission with the company's current contact information and to 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).

Thus, ICC’s failure to provide our staff with the company’s current contact information and to file a tariff with this Commission meets the standard for a “refusal to comply” and a “willful violation” 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 ICC are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

III. Decision

This Commission is vested with jurisdiction over this matter pursuant to Sections 364.02(13), 364.04, and 364.285, Florida Statutes. Further, the amount of the proposed penalty

is consistent with penalties previously imposed by this Commission upon intrastate interexchange telecommunications companies providing intrastate interexchange services within the state that failed to provide this Commission with the company's current contact information and to file a tariff. Therefore, we hereby impose a penalty upon ICC in the amount of \$25,000 for the company's apparent violation of Sections 364.02 (13) and 364.04, Florida Statutes.

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 shall be deemed stipulated. If ICC 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 the company's tariff; the company's current contact information; and the payment of the penalty; or 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 Inter Con Communications is hereby assessed a penalty of \$25,000 for 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 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 Inter Con Communications 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 Inter Con Communications 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 8th day of February, 2005.



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

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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 March 1, 2005.

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.