

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of U S P & C Corporation for apparent violations of Sections 364.336, F.S., Regulatory Assessment Fees; Telecommunications Companies, and Section 364.02(13), F.S., Definitions.

DOCKET NO. 050260-TI  
ORDER NO. PSC-05-0581-PAA-TI  
ISSUED: May 26, 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 PENALTIES AND COSTS

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.

Non-payment of fees

USP&C Corporation (USP&C) is a registered intrastate interexchange telecommunications company (IXC) located in Overland Park, Kansas. On December 5, 1998, this Commission granted USP&C IXC Registration No. TJ147.

On December 15, 2004, our Division of the Commission Clerk & Administrative Services mailed the 2004 Regulatory Assessment Fee (RAF) return notice to USP&C. On February 18, 2005, our Office of General Counsel mailed a delinquent notice via certified mail to the company for nonpayment of its 2004 RAF. USP&C has not paid the RAF required by Section 364.336, Florida Statutes, for 2004. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, have not been paid. In addition, USP&C had a prior docket for the same statute violation concerning its 1998 RAFs and statutory late payment charges in which the Commission accepted a proposed settlement.

Pursuant to Section 364.336, Florida Statutes, IXCs must pay a minimum annual RAF of \$50 if the registration was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida

DOCUMENT NUMBER - DATE

05117 MAY 26 05

FPSC-COMMISSION CLERK

Public Service Commission by January 30 of the subsequent year. Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a registration if a company refuses to comply with Florida statutes. Therefore, we hereby impose a penalty and cost of collection, together totaling \$1,000, on USP & C Corporation for its apparent second violation of Section 364.336, F.S., Regulatory Assessment Fees

Failure to respond to Commission requests for information

On February 25, 2005, our staff sent an inquiry to USP&C via United States Postal Service (U.S.P.S.) certified mail. The letter was returned unopened by the U.S.P.S. stamped "Attempted – Not Known." Prior to mailing its inquiry, our staff attempted to contact the company via telephone and found that its telephone and facsimile numbers had been disconnected.

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....

It is believed that USP&C's failure to provide us with the company's current contact information is a "willful violation" of Section 364.02(13), Florida Statutes, in the sense intended by Section 364.285, 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 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, the failure of USP&C to provide us with the company's current contact information 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 USP&C, are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

Pursuant to Section 364.285(1), Florida Statutes, we are authorized to impose upon any entity subject to our 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. Therefore, we hereby impose a penalty in the amount of \$500 upon U S P & C Corporation for its apparent violation of Section 364.02(13), F.S.

As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. If USP & C fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts shall be deemed admitted and the right to a hearing waived. If the company fails to pay the penalties imposed by this Order within fourteen (14) calendar days after the issuance of the Consummating Order, USP & C's IXC tariff shall be canceled and IXC Registration No. TJ147 shall be removed from the register administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges, shall be referred to the Florida Department of Financial Services for further collection efforts. For any payment received applicable to the penalty, including cost of collection, the cost of collection shall be subtracted from the amount received and shall be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. Any monetary amount exceeding the cost of collection shall be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. If the company is removed from the register in accordance with the Commission's Order from this recommendation, the company shall be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. This docket shall be closed administratively either upon receipt of the payment of the penalties and

cost of collection, and Regulatory Assessment Fees, including statutory late payment charges, or upon removal of the company from the register.

We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.02, 364.336, and 364.285, Florida Statutes. Further, the amount of the penalties are consistent with penalties previously imposed by us upon intrastate interexchange telecommunications companies for similar violations.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the penalties and conditions described in the body of this order are hereby imposed. 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.

By ORDER of the Florida Public Service Commission this 26th day of May, 2005.



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

( S E A L )

LF

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 16, 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.