

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of NETECOM, Inc. for apparent violation of Rules 25-24.470, F.A.C., Registration Required.	DOCKET NO. 070050-TI ORDER NO. PSC-07-0278-PAA-TI ISSUED: April 2, 2007
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPOSING A PENALTY FOR APPARENT VIOLATION OF RULE 25-24.470,
FLORIDA ADMINISTRATIVE CODE

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 October 13, 2006, our staff received a customer complaint against NETECOM, Inc. (NETECOM) regarding an unauthorized switch of long distance services. According to the customer's complaint, NETECOM switched the customer's long distance services without permission and continued to bill the customer after the customer switched back to his preferred provider. After receiving the complaint, our staff determined that NETECOM was not registered and had not filed a tariff with the Commission. Our staff sent two certified letters to the company. Copies of the letters were also sent to the company via facsimile. NETECOM signed the return receipt card for each of the certified letters and the facsimile transmittal form also indicated that the letters were successfully faxed to the company. However, the company never responded.

We are vested with jurisdiction over these matters pursuant to Sections 364.02, 364.04, and 364.285, Florida Statutes.

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II. Analysis

Rule 25-24.470, Florida Administrative Code, Registration Required, states:

No person shall provide intrastate interexchange telephone service without first filing an initial tariff containing the rates, terms, and conditions of service and providing the company's current contact information with the Division of the Commission Clerk and Administrative Services.

As stated in the case background, our staff made several attempts to contact the company via certified letter and facsimile. Each letter requested that the company resolve the customer complaint and provide our staff with a copy of the letter of authorization (LOA) or third party verification (TPV) wherein the customer authorized the company to provide service. The letters also requested that the company register as an intrastate interexchange company (IXC) and file a tariff with this Commission. To date NETECOM has not resolved the customer complaint, registered as an intrastate interexchange company, or provided our staff with any of the requested information. Since NETECOM never provided our staff with a copy of the LOA or TPV, our staff was unable to determine if the company operated in apparent violation of Rule 24-4.118, F.A.C. However, our staff did determine that NETECOM was operating in apparent violation of Rule 25-24.470, Florida Administrative Code, Registration Required.

We hereby find that NETECOM's failure to register and file a tariff with this Commission is a "willful violation" of Rule 25-24.470, Florida Administrative Code, Registration Required, 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 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, NETECOM's failure to register and 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 telecommunication companies, like NETECOM, by virtue of their IXC registration, are subject to the rules published in the Florida Administrative Code. See, *Commercial Ventures, Inc. v. Beard*, 595 So.2d 47, 48 (Fla. 1992).

Further, the amount of the proposed penalty is consistent with penalties previously imposed by this Commission upon intrastate interexchange telecommunications companies that were providing intrastate interexchange services within the state that failed to register and to file a tariff with the Commission.

III. Decision

Therefore, we find it appropriate to impose a penalty upon NETECOM in the amount of \$25,000 for the company's apparent violation of Rule 25-24.470, F.A.C.

This Order will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by our 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 this Order. As provided by Section 120.80(13) (b), Florida Statutes, any issues not in dispute shall be deemed stipulated. If NETECOM 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 current contact information, tariff, and 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 we hereby impose a penalty upon NETECOM, Inc. in the amount of \$25,000 for the apparent violation of Rule 25-24.470, F.A.C. 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 Office of Commission Clerk, 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 if the company 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. It is further

ORDERED that 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. It is further

ORDERED that this docket shall be closed upon receipt of the company's current contact information, tariff, and payment of the penalty, or upon the referral of the penalty to the Department of Financial Services.

By ORDER of the Florida Public Service Commission this 2nd day of April, 2007.



ANN COLE
Commission Clerk

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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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 23, 2007.

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.