

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide competitive local exchange telecommunications service by Premier Telecom-VoIP, Incorporated. | DOCKET NO. 070172-TX

In re: Acknowledgment of registration as intrastate interexchange telecommunications company, effective March 15, 2007, by Premier Telecom-VoIP, Incorporated. | DOCKET NO. 070174-TI  
ORDER NO. PSC-07-0673-PAA-TP  
ISSUED: August 21, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER  
DENYING PREMIER TELECOM-VoIP, INC.'S CLEC APPLICATION  
AND REMOVING PREMIER TELECOM-VoIP, INC.'S NAME FROM IXC REGISTER  
AND CANCELLING ITS TARIFF AND REGISTRATION NUMBER

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.

The Commission has jurisdiction over these matters pursuant to Sections 364.02, 364.04, 364.183, 364.285, and 364.337, Florida Statutes.

**Background**

On March 15, 2007, Premier Telecom-VoIP, Incorporated (Premier) filed an application pursuant to Rule 25-24.810, Florida Administrative Code (Form PSC/CMP 8 (1/06)) seeking Commission authority to provide competitive local exchange telecommunications services (CLEC) within Florida. The application identified Mr. Joe Vitale as liaison to the Commission regarding the application and for ongoing operations of the company.

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FPSC-COMMISSION CLERK

On the same day, Premier filed an IXC Registration pursuant to Rule 25-24.470, Florida Administrative Code (Form PSC/CMP 31 (08/05)), along with an initial tariff, to provide intrastate interexchange telecommunications services (IXC) within Florida. Mr. Joe Vitale signed the registration form as the company's representative.

This order addresses both Premier's CLEC application and its IXC registration.

CLEC Application - Docket No. 070172-TX

In completing the CLEC application, Premier is required to:

- identify the persons responsible for the application and on-going company operations;
- provide contact information (address, phone number, etc.);
- provide proof of active registration with the Florida Secretary of State;
- complete a series of questions about the company, officers, directors, and stockholders; and
- provide proof that it has the managerial, technical, and financial capability to operate as a CLEC in Florida.

Commission staff reviewed Premier's application for completeness. Our staff verified the company's corporate registration, reviewed the managerial, technical, and financial information, and checked the Commission's databases for historical information about the company, officers, and directors. The corporate registration filed with the Secretary of State identifies Premier's officers as:

- Jose. Vitale                      President
- John W. Little                  Vice president
- John Vitale                      Vice president
- Martha Vitale                  Secretary

The Commission's records indicate that some of Premier's officers may have been associated with other registered or certificated telecommunications companies in Florida. Specifically, the Commission's Master Commission Directory contains the following data:

1. Mr. Joe Vitale is listed as the person to receive mailings for UKI Communications, Inc. (UKI). UKI was the subject of Docket No. 020645-TI, In Re: Compliance investigation of UKI Communications, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection. Ultimately, the Commission penalized UKI in the amount of \$250,000 for the apparent violation of PAA Order No. PSC-03-0990-PAA-TI (the company failed to honor its settlement offer).
2. Ms. Martha Vitale is identified as the liaison for Sonic Communications, Inc. (Sonic). Sonic was the subject of Docket No. 930261-TI, In Re: Initiation of show cause proceedings against SONIC COMMUNICATIONS, INC. for violation of Rule 25-4.118,

F.A.C., Interexchange Carrier. Sonic honored its settlement agreement in Docket No. 930261-TI. Ultimately, Sonic's IXC certificate was cancelled in Docket No. 951066-TI, In Re: Cancellation by Florida Public Service Commission of Interexchange Telecommunications Certificate No. 3144 issued to Sonic Communications, Inc. for violation of Rule 25-24.480, F.A.C., Records and Reports; Rules Incorporated.

3. Mr. John W. Little is listed as the president and liaison for America's Tele-Network Corp. (ATN). ATN operated as a CLEC and an IXC in Florida. ATN was the subject of Docket No. 001066-TI, In Re: Initiation of show cause proceedings against America's Tele-Network Corp. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection, and Docket No. 001813-TX, In Re: Initiation of show cause proceedings against America's Tele-Network Corp. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries. The company agreed not to object to the Commission's involuntary cancellation of its CLEC and IXC certificates.

Based upon the information above, Commission staff believes that Premier may have failed to accurately complete parts of the CLEC application. Part 17.(c) of the CLEC application provides:

Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been an officer, director, partner or stockholder in any other Florida certificated or registered telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

In answer to Part 17.(c) of the CLEC application, Premier responded "None." On May 8, 2007, our staff mailed and faxed a letter to Premier seeking clarification of its response in Part 17.(c). Our staff also requested supplemental information regarding management resumes. Premier did not respond to our staff's letter.

Sections 2.07.C.5.16.g(1),(2), of the Commission's Administrative Procedures Manual (APM), provide that Commission staff may administratively deny a CLEC application if the application is incomplete or inaccurate. To do so, our staff must send a certified letter to the applicant requesting completion and/or correction of the application. If the applicant does not respond within 15 days, our staff may close the docket upon issuance of an administrative order denying the application.

On May 25, 2007, our staff mailed Premier a certified letter. Our staff included a copy of its May 8<sup>th</sup> letter, and a warning that Premier's CLEC application may be denied should it fail to provide the requested information. The May 25, 2007 letter was delivered on May 28, 2007. Premier did not respond to the May 25, 2007 letter.

Premier's failure to respond is also an apparent violation of Section 364.183, Florida Statutes, Access to company records. Rather than issue an administrative order denying Premier's CLEC application in this case, however, our staff opted instead to file a recommendation for the Commission's consideration.

### Analysis

Section 364.337(1), Florida Statutes, provides in part that the Commission shall grant a certificate of authority to provide competitive local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

As noted in the Background section, above, Premier has failed to respond to our staff's inquiries directed to Part 17.(c) of the CLEC application regarding officers, directors, and stockholders. An applicant's response, among other things, is used by our staff in determining the sufficiency of the applicant's managerial capability. Premier was provided two separate opportunities to respond but failed to respond both times.

Additionally, Section 364.183(1), Florida Statutes, Access to Company Records, states in pertinent part:

The Commission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the Commission's jurisdiction. The Commission shall also have access to those records of a local exchange telecommunications company's affiliated companies, including its parent company, that are reasonably necessary for the disposition of any matter concerning an affiliated transaction or a claim of anticompetitive behavior including claims of cross-subsidization and predatory pricing. The Commission may require a telecommunications company to file records, reports, or other data directly related to matters within the Commission's jurisdiction in the form specified by the Commission and may require such company to retain such information for a designated period of time.

A company's failure to respond to our staff's data request denies staff access to its records. As discussed in the Background section, above, the names of several of Premier's officers matched names of persons found in the Master Commission Directory (MCD). Our staff reviews the Commission's records to determine if officers of a new applicant have any prior association with companies that were involved in compliance dockets. Our staff routinely uses this information to assist it in evaluating a company's managerial capability.

Pursuant to Section 364.285(1), Florida Statutes, the 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 the 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, 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. 1<sup>st</sup> 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 the least covers an act of purposefulness.

“Willful violation,” however, 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). As the First District Court of Appeal stated, “willfully” can be defined as follows:

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. [Emphasis added].

Metropolitan Dade County v. State Department of Environmental Protection, 714 So.2d 512, 517 (Fla. 1<sup>st</sup> DCA 1998). 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, Premier’s failure to respond to our staff’s inquiry meets the standard for a “refusal to comply” and a “willful violation,” as contemplated by 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. 3<sup>rd</sup> DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all telecommunication companies, like Premier, by virtue of their application for CLEC certification, are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

### **Conclusion**

We conclude that by not responding to staff’s inquiries, Premier has failed to show that it has sufficient managerial capability as required by Section 364.337(1), Florida Statutes. Further, we conclude that Premier’s failure to respond to staff’s inquiry was intentional and is a “willful violation” of Section 364.183, Florida Statutes, Access to company records, in the sense intended by Section 364.285, Florida Statutes.

Our staff did not recommend a financial penalty in this case and we agree. However, Premier’s application for authority to provide competitive local exchange telecommunications services within Florida shall be denied for its failure to show that it has sufficient managerial capability as required by Section 364.337(1), Florida Statutes, and its apparent violation of Section 364.183, Florida Statutes.

IXC Registration - Docket No. 070174-TI

Due to changes in Florida Statutes, IXCs are no longer required to submit an application seeking Commission authority to provide interexchange telecommunications services in Florida. However, a company must submit an IXC Registration Form and file a tariff prior to providing its services to the public.

Pursuant to Rule 25-24.470, Florida Administrative Code, Premier filed a complete registration form and a tariff that appears to be in order. Upon receipt of Premier's IXC registration, the Commission Clerk assigned the company Registration No. TK143, with an effective date of March 15, 2007.

Even though the IXC registration is active upon receipt by the Commission, our staff reviews the registration form and initial tariff, and verifies that the company is actively registered with the Secretary of State. As required, our staff coordinates changes to the tariff or registration form with the registrant. When everything is in order, our staff submits an acknowledgment memorandum, including a request to close the docket, to the Commission Clerk, with a copy to the registrant in accordance with Section 2.07.C.5.16.h of the APM.

Analysis

As previously discussed, Premier has demonstrated a lack of management capability in conjunction with its CLEC application. Our staff believed it would be negligent to issue an acknowledgment memorandum, close the docket, and not bring this matter of Premier's IXC registration before the Commission for consideration.

Premier filed a complete registration form and a tariff that appears to be in order. Unlike a company seeking CLEC authority, a demonstration of sufficient managerial capability is not a statutory or Commission rule requirement for companies registering as IXCs in Florida. Nevertheless, the same officers operate Premier's CLEC and IXC operations. We believe that the apparent violation of Section 364.183, Florida Statutes, presented in Docket No. 070172-TX, is a management issue for Premier Telecom-VoIP, Incorporated. It is not an issue with boundaries defined by the types of telecommunications services provided or by docket numbers.

Companies that are registered as IXCs and are not certificated as CLECs are also subject to rules regarding Commission inquiries. Specifically, Rule 25-24.475(5), Florida Administrative Code, Company Operations and Customer Relations, requires that an IXC respond to Commission inquiries within 15 days. Premier failed to do so.

Conclusion

We conclude that allowing Premier to continue its IXC operations would not be in the public's interest. Further, in addition to denying Premier's request for CLEC authority, we conclude that Premier's name shall be removed from the IXC register, and that its tariff and

Registration No. TK143 shall be cancelled on our own motion, with an effective date of March 15, 2007.

Based on the foregoing, it is

ORDERED that Premier's application for authority to provide competitive local exchange telecommunications services within Florida is denied. It is further

ORDERED that Premier's name shall be removed from the IXC register, and that its tariff and Registration No. TK143 shall be cancelled on our own motion, with an effective date of March 15, 2007. 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 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 in the event this Order becomes final, these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of August, 2007.



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ANN COLE  
Commission Clerk

( S E A L )

HFM

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 September 11, 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.