

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of UMCC || DOCKET NO. 070566-TI
Holdings for apparent violation of Rule 25- || ORDER NO. PSC-07-0821-PAA-TI
24.470, F.A.C., Registration Required. || ISSUED: October 15, 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 IMPOSING A PENALTY FOR APPARENT VIOLATION OF RULES 25-24.470
AND 25-22.032, 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

In March 2007, our staff learned that UMCC Holdings (UMCC) may have acquired the customer base of Buzz Telecom Corporation after we cancelled Buzz Telecom Corporation's IXC registration and tariff. Prior to March 2007, this Commission received three customer complaints for slamming against Buzz Telecom Corporation. The customers did change their toll service back to their carrier of choice. On March 26, 2007, our staff mailed UMCC a certified letter regarding the complaints. On June 6, 2007, a letter was received from UMCC, wherein the company stated that it had resolved all of the customer complaints. UMCC also acknowledged that the company had acquired Buzz Telecom Corporation's customers, via an asset acquisition, on December 11, 2006.

On June 20, 2007, we received a customer complaint against UMCC for the unauthorized switch of the customer's long distance service (slamming). UMCC had not registered as an intrastate interexchange company (IXC), nor filed a tariff with this Commission. After receiving the complaint, our staff contacted the company, via certified letter, and requested that the company resolve the customer complaint and register and file a tariff with this Commission.

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UMCC signed the certified mail receipt on July 9, 2007. However, the company never responded to the request.

It appears that UMCC is providing intrastate interexchange telecommunications services in Florida which is an apparent violation of Rule 25-24.470, Florida Administrative Code (F.A.C.), Registration Required. UMCC has also failed to respond to the customer complaint, which is an apparent violation of Rule 25-22.032, F.A.C., Customer Complaints.

We are vested with jurisdiction over these matters pursuant to Sections 364.02, 364.04, 364.285, 364.603, 364.604, and 364.183, Florida Statutes.

II. Analysis

A. Apparent Violation of Rule 25-24.470, F.A.C.

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, this Commission notified UMCC of its requirement to register as an IXC and file a tariff with us. We also 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. To date, UMCC has not resolved the customer complaint, registered as an intrastate interexchange company, or provided a copy of the LOA or TPV. Because UMCC never provided a copy of the LOA or TPV, our staff was unable to determine if the company changed the customer's long distance service in apparent violation of Rule 24-4.118, F.A.C. However, our staff determined that UMCC was operating in apparent violation of Rule 25-24.470, Florida Administrative Code, Registration Required.

We find that UMCC'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, UMCC’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 UMCC, are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

B. Rule 25-22.32(6)(b), F.A.C., Customer Complaints

Rule 25-22.032(6)(b), F.A.C., requires that the company provide a written response to the complaint within 15 working days. As stated in the case background, after receiving the customer complaint, our staff contacted the company, via certified letter, and requested that the company resolve the customer complaint. The letter also advised UMCC that it may be subject to penalties if the company failed to respond. UMCC signed the certified mail receipt, which indicates that the company did receive the letter. However, the company never responded.

Upon application of the above "willful violation" standard, we find that that UMCC's failure to timely respond to customer complaints is a "willful violation" of Rule 25-22.032(6)(b), Florida Administrative Code, Customer Complaints, in the sense intended by Section 364.285, Florida Statutes.

III. Decision

The amount of the proposed \$25,000 penalty is consistent with penalties previously imposed by this Commission upon telecommunications companies that were providing intrastate interexchange services within the state that failed to register and to file a tariff with this Commission. Therefore, we find it appropriate to impose a penalty upon UMCC in the amount of \$25,000 for the company's apparent violation of Rule 25-24.470, F.A.C.

Further, the amount of the proposed penalty is consistent with penalties previously imposed by this Commission upon telecommunications companies that failed to timely respond to customer complaints. Therefore, we find it appropriate to impose a penalty in the amount of \$10,000 upon UMCC Holdings for its apparent violations of Rule 25-22.032(6)(b), Customer Complaints, 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 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 UMCC 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 penalties are not received within fourteen (14) calendar days after the issuance of the Consummating Order the penalties 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 and tariff, the company's response to the customer complaint, and payment of the penalties, or upon the referral of the penalties to the Department of Financial Services.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a penalty in the amount of \$25,000 upon UMCC, Holdings for its apparent violation of Rule 25-24.470, F.A.C. It is further

ORDERED that a penalty in the amount of \$10,000 upon UMCC Holdings for its apparent violation of Rule 25-22.032(6)(b), 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 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 pursuant to Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. It is further

ORDERED that if UMCC 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 penalties are not received within fourteen (14) calendar days after the issuance of the Consummating Order, the penalties 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 administratively upon receipt of the company's current contact information and tariff, the company's response to the customer complaint, and payment of the penalties, or upon the referral of the penalties to the Department of Financial Services.

By ORDER of the Florida Public Service Commission this 15th day of October, 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 November 5, 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.