

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
JAN - 8 AM 11:22
COMMISSION CLERK

DATE: January 8, 2004
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (CURRY) KLC
DIVISION OF CONSUMER AFFAIRS (LOWERY)
OFFICE OF THE GENERAL COUNSEL (ROJAS)
RE: DOCKET NO. 031106-TX - COMPLIANCE INVESTIGATION OF KEVIN M. BROWN D/B/A MIRACLE COMMUNICATIONS FOR APPARENT VIOLATION OF RULES 25-22.032 (5)(A), F.A.C., CUSTOMER COMPLAINTS AND 25-24.835 F.A.C., RULES INCORPORATED.
AGENDA: 01/20/04 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\CMP\WP\031106.RCM

CASE BACKGROUND

- December 2, 1999 - Kevin M. Brown d/b/a Miracle Communications (Miracle Communications) obtained Certificate No. 7254 authorizing the company to provide competitive local exchange telecommunications services within Florida.
July 21, 2003 - The Division of Consumer Affairs (CAF) received a complaint (Attachment A) against Miracle Communications regarding the disconnection of the complainant's phone service. Staff faxed a copy of the complaint to the company and requested that the company investigate the complaint and submit a response by August 11, 2003.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

- September 16, 2003 - After not receiving a response from the company by the due date, staff notified the company that its response was past due and requested that the company respond by September 19, 2003.
- September 29, 2003 - A second notice was sent to inform the company that staff still had not received a response to the complaint. The deadline for the company to respond to the second notice was October 3, 2003.
- September 30, 2003 - Staff attempted to call Miracle Communications using the telephone numbers listed in the Master Commission Directory; however, staff was unable to reach anyone because the telephone numbers were disconnected. Staff later emailed the company requesting a response to the complaint. The email also requested that the company provide the Commission with its current contact information. The email was returned undeliverable.
- October 7, 2003 - After not receiving a response to the second notice, a certified letter (Attachment B) was sent from the General Counsel to Miracle Communications. The letter informed the company that staff had not received its response to the customer's complaint and requested that the company respond within fifteen business days of the date of the letter. The letter also informed the company that if it did not respond by the deadline that the company could potentially be fined and/or have its certificate revoked.
- October 20, 2003 - Staff received the green certified mail receipt (Attachment C), indicating that the General Counsel's letter was received by the company.
- December 5, 2003 - Staff opened this docket to address Miracle Communications apparent violations of Rule 25-22.032 (5) (a), F.A.C., and 25-24.835, F.A.C.
- December 23, 2003 - Staff notified the customer of this proceeding and informed him that any settlement would include the resolution of his complaint.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.183, 364.285, 364.337, Florida Statutes. Accordingly, staff believes that following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a \$10,000 penalty upon Miracle Communications for its apparent violation of Rule 25-22.032(5)(a), Florida Administrative Code, Consumer Complaints, to be paid to the Florida Public Service Commission within fourteen days after the issuance of the Consummating Order?

RECOMMENDATION: Yes, the Commission should impose a \$10,000 penalty upon Miracle Communications for its apparent violation of Rule 25-22.032(5)(a), Florida Administrative Code, Consumer Complaints. If Miracle Communications fails to timely protest the Commission's Order and fails to pay the imposed penalty of \$10,000 within fourteen calendar days after the issuance of the Consummating Order, Certificate No. 7254 should be canceled and the company should be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida. (Curry, Rojas)

STAFF ANALYSIS: Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, states:

The staff member will notify the company of the complaint and request a response. The company shall provide its response to the complaint within fifteen (15) working days. The response shall explain the company's actions in the disputed matter and the extent to which those actions were consistent with applicable statutes and regulations. The response shall also describe all attempts to resolve the customer's complaint.

After receiving the customer complaint filed against Miracle Communications, staff made several attempts to obtain a response from the company. As of the date of filing this recommendation, Miracle Communications has yet to respond to the customer complaint, which is in apparent violation of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints.

Staff believes that Miracle Communications's failure to provide the required response to the customer's complaint is a "willful violation" of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, in the sense intended by Section 364.285, Florida Statutes.

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, 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, the failure of Miracle Communications to provide staff a written response to the customer's complaint within fifteen working days meets the standard for a "refusal to comply" and a "willful violation" as contemplated by the Legislature when enacting section 364.285, Florida Statutes.

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Miracle Communications cannot defend the matter, claiming that it did not know that it had the duty to respond to staff's inquiries. "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 Miracle Communications, by virtue of their Certificate of Public Convenience and Necessity, 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 the Commission upon competitive local exchange telecommunications companies for similar violations. Thus, staff recommends that the Commission find that Miracle Communications has, by its actions and inactions, willfully violated Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, and impose a \$10,000 penalty on the company to be paid to the Florida Public Service Commission.

ISSUE 2: Should the Commission impose a penalty of \$500 upon Miracle Communications for its apparent violation of Rule 25-24.835, Florida Administrative Code, Rules Incorporated, to be paid to the Florida Public Service Commission within fourteen calendar days after the issuance of the Consummating Order?

RECOMMENDATION: Yes, the Commission should impose a \$500 penalty upon Miracle Communications for its apparent violation of Rule 25-24.835, Florida Administrative Code, Rules Incorporated. If Miracle Communications fails to timely protest the Commission's Order and fails to pay the \$500 penalty within fourteen calendar days after the issuance of the Consummating Order, Certificate No. 7254 should be canceled and the company should also be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida. (Curry, Rojas)

STAFF ANALYSIS: Rule 25-24.480, Florida Administrative Code, Records and Reports; Rule Incorporated, incorporated by reference into Rule 25-24.835, Florida Administrative Code, Rules Incorporated, requires that a company update its contact information with the Commission within 10 days of a change. On September 30, 2003, when staff attempted to contact Miracle Communications using the contact information in the Master Commission Directory, staff found that the telephone numbers listed were no longer in service. To date, the company has not updated its contact information with the Commission.

Staff believes that Miracle Communication's apparent violation of Rule 25-24.835, Florida Administrative Code, Rules Incorporated, has been "willful" in the sense intended by Sections 364.285, Florida Statutes, and pursuant to Sections 364.285, 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 offense, if such entity is found to have refused to comply with any lawful rule of the Commission.

Accordingly, staff recommends that the Commission find that Miracle Communications has, by its actions and inactions, willfully violated Rule 25-24.835, Florida Administrative Code, Rules Incorporated, and impose a penalty of \$500 upon the company to be paid to the Florida Public Service Commission. If Miracle Communications fails to protest the Commission's Order and fails to pay the proposed penalty, then staff recommends that the company's certificate be canceled and that the company be required to immediately cease and desist providing competitive local exchange telecommunications services in Florida.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: The Order issued from these recommendations will become final upon issuance of the Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Propose Agency Action Order. If the Commission's Order is not protested, this docket should be closed upon receipt of the payment of the penalties or the cancellation of Certificate No. 7254.
(Rojas)

STAFF ANALYSIS: Whether staff's recommendations on Issues 1 or 2 are approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed administratively upon receipt of the payment of the penalties or the cancellation of Certificate No. 7254.

Request No. 545638T Name ALFORD ,ELIJAH MR. Business Name _____

Consumer Information Name: ELIJAH ALFORD Business Name: Svc Address: 3535 ROBERTS AVENUE #98 County: Leon Phone: (850)-580-1672 City/Zip: Tallahassee / 32310- Account Number: Caller's Name: ELIJAH ALFORD Mailing Address: 3535 ROBERTS AVENUE #98 City/Zip: TALLAHASSEE ,FL 32310- Can Be Reached: (850)-580-1672 E-Tracking Number:	Florida Public Service Commission - Consumer Request 2540 Shumard Oak Boulevard Tallahassee, Florida 32399 850-413-6100	PSC Information Assigned To: CMP Entered By: DKF Date: 07/21/2003 Time: 08:55 Via: PHONE Prelim Type: IMPROPER PO: Disputed Amt: 45.00 Supmntl Rpt Req'd: / / Certified Letter Sent: 10/07/2003 Certified Letter Rec'd: 10/20/20 Closed by: Date: / / Closeout Type: Apparent Rule Violation: N
	Utility Information Company Code: TX366 Company: MIRACLE COMMUNICATIONS Attn. Marcell Brown 545638T Response Needed From Company? Y Date Due: 08/11/2003 Fax: 61,817-478-4078 R	
	Interim Report Received: / / Reply Received: / / Reply Received Timely/Late: Informal Conf.: N	

Preclose type - Improper Disconnect

Are you currently without service? No.

When was the service disconnected? Roughly two months ago (May 2003).

Did you receive a disconnect notice? No

Other Comments: Customer states his service was disconnected without notice due to Miracle losing it's contract with Sprint. He states h has been assured multiple times that he would receive a refund for service he paid for but did not receive. He has spoken with a Mr. Kevin (Calvin?) Brown and was assured the refund would be sent, however he has yet to receive the refund. Customer requests roughly \$45.00 refunded: \$20.00 for local and roughly \$20.00 to \$25.00 for LD (LD was disconnected due to local being disconnected).

Request No. 545638T Name ALFORD ,ELIJAH MR. Business Name _____

ORIGINAL

Please investigate this matter, contact the customer, and provide a detailed written report to the Florida Public Service Commission by the due date.

Case taken by DFalise
Send Response to
Fax number 850-413-7168
E-mail : PSCREPLY@PSC.STATE.FL.US

CAF Note - X-Reference 545641T

9/16/03 ATTN COMPANY: YOUR RESPONSE IS PAST DUE, PLEASE RESPOND BY 9/19/03. SHONNA MCCRAY

9/23/2003 Company received the Past Due Report. P.Lowery

9/29/03 - Customer called @ 3:45 PM for status update and was informed that the company still has not responded to this complaint. Customer informed that complaint will be resent along with another delinquent notice. NForsman

*****ATTENTION COMPANY - 2ND DELINQUENT NOTICE: Your response is delinquent. Please respond on or before 10/3/03. *****

9/30/03 Telephoned (817) 478-9935 and (866) 874-7769 (Miracle Communications). Both numbers have been disconnected. Sent the following e-mail to miracle@airmail.com: We have not had a response from you regarding Complaint #545638 re:

"Elijah Alford. I have tried to call you at (817) 478-9935 and (866) 874-7769 and received a disconnect signal for both numbers.

Please send me you response to the above complaint at my e-mail address (jariola@psc.state.fl.us) or my fax address (850) 413-6559.

Also please include your new telephone and fax numbers and visit our Florida Public Service Commission web page (www.floridapsc.com) and update your contact information."

The message was not deliverable. Turned over to Paul Lowery for further handling. JARIOLA

10/06/03 Customer called to check on status of case. Customer callback info cell #850-294-4501. LKAlford

Request No. 545638T Name ALFORD ,ELIJAH MR. Business Name _____

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10/7/2003 Certified Letter from General Counsel sent by CAF to company. P.Lowery
10/20/03 Customer called to check the status of his complaint. He was advised that a letter from GC had been sent to company regarding response. Customer stated that he would call back near the end of the month. KDodson
10/20/2003 Certified green card received by mail. P.Lowery
11/3/03 - Customer called @ 3:00 PM for status update. Customer was advised of above documentation and informed that the company has still not responded. Customer requests a return call from PSC to further discuss this matter and available options. RRoland notified via email. NForsman
11/10/03 Customer called re status case; reviewed notes to date with customer; customer states will callback in a week or so. LKAlford
11/10/2003 Case to be reassigned to the Division of Competitive Markets and Enforcement for handling since it appears the company is refusing to respond. P.Lowery
11-24-2003 Customer contacted FPSC for update of his case. E-mailed P. Lowery. D. f.
11/25/03 Customer called; was given contact information Competitive Markets & Enforcement. LKAlford
11/25/2003 Case reassigned to the Division of Competitive Markets and Enforcement. P>Lowery

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Request No. 545638T Name ALFORD, ELIJAH MR. Business Name

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



GENERAL COUNSEL
HAROLD A. MCLEAN
(850) 413-6248

Public Service Commission

October 7, 2003

Return Receipt Requested

Mr. Marcell Brown
Miracle Communications
P. O. Box 50155
Fort Worth, Texas 76105-0155

Re: Past Due Company Response to Consumer Complaints

Dear Mr. Brown:

The Florida Public Service Commission's Division of Consumer Affairs (CAF) has informed my office that Miracle Communications has not responded to the Commission regarding a specific consumer complaint. Despite numerous attempts by CAF to obtain a reply to the complaint, our records show that a company response has not been received to date.

The Commission intends to see that disputes between regulated companies and their customers be resolved as quickly, effectively, and inexpensively as possible. According to PSC Rule 25-22.032(5)(a):

" . . . a Commission staff member will investigate the complaint and attempt to resolve the dispute in the following manner: The staff member will notify the company of the complaint and request a response. The company shall provide its response to the complaint within fifteen (15) working days. The response shall explain the company's actions in the disputed matter and the extent to which those actions were consistent with applicable statutes and regulations. The response shall also describe all attempts to resolve the customer's complaint."

I have enclosed a copy of the original complaint form for which we have no response. If the Commission has not received a response within fifteen (15) business days of the date of this letter, Miracle Communications is potentially at risk of being fined and/or having its certificate revoked. Please respond via fax to (850) 413-7168, or e-mail the response to PSCREPLY@psc.state.fl.us.

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Attachment B

Marcell Brown
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If you have any questions or need assistance, please contact Bev DeMello, Director of Consumer Affairs at (850) 413-6107 or by e-mail at bdemello@psc.state.fl.us, or Leroy Rasberry, Chief, Bureau of Complaint Resolution at (850) 413-6119, e-mail lraser@psc.state.fl.us.

Sincerely,

Harold McLean

Harold McLean
General Counsel

HM:bsd/jmb
Enclosures

cc: Mary Andrews Bane, Executive Director
Bev DeMello, Director, Consumer Affairs

ORIGINAL

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Received by (Please Print Clearly)	B. Date of Delivery
	JAMES BROWN 10-14-03	
1. Article Addressed to:	C. Signature	
Mr. Marcell Brown	* James Brown	
Miracle Communications	<input type="checkbox"/> Agent	
P. O. Box 50155	<input type="checkbox"/> Addressee	
Fort Worth, Texas 76105-0155	D. Is delivery address different from item 1?	
	<input type="checkbox"/> Yes	
	If YES, enter delivery address below: <input type="checkbox"/> No	
	3. Service Type	
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail	
	<input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise	
	<input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		
PS Form 3811, March 2001 Domestic Return Receipt 102595-01-M-1424		