

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Global Link  
Communications, Inc. for apparent violation of  
Section 364.02, Florida Statutes, Definitions.

DOCKET NO. 040161-TI  
ORDER NO. PSC-04-0413-PAA-TI  
ISSUED: April 21, 2004

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER IMPOSING PENALTY

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.

Pursuant to Section 364.285, Florida Statutes, this Commission may impose a penalty or cancel a certificate if a company refuses to comply with Commission rules or any provision of Chapter 364, Florida Statutes. 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....

Global Link Communications, Inc. (Global Link) is a registered interexchange telecommunications company (IXC), based in Miami, Florida that provides intrastate interexchange telecommunications services in Florida. On November 17, 2003, our staff received a complaint filed against Global Link regarding the purchase of a prepaid calling card. Between November 17, 2003, and January 14, 2004, our staff made several attempts, via facsimile, telephone, and certified mail, to notify Global Link of the complaint and to request that the company investigate the complaint and submit a written response to our staff. As of the date of this agenda conference, Global Link has not communicated with our staff or replied to

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the customer complaint, which is in apparent violation of Section 364.02(13), Florida Statutes. A signed green certified mail receipt was returned by the United States Postal Service indicating that the company did receive the certified letter that was sent by the General Counsel. Therefore, we find that the company has been adequately notified of its obligation to reply to the complaint and has been provided sufficient time to contact and communicate with our staff.

We find that Global Link's failure to communicate with Commission staff is a "willful violation" of Section 364.02(13), Florida Statutes, 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.

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. 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 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. 1<sup>st</sup> 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, Global Links' failure to communicate with Commission staff meets the standard for a "refusal to comply" and "willful violations" 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. 3<sup>rd</sup> DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all intrastate interexchange telecommunication companies, like Global Link are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

This Commission is vested with jurisdiction over these matters pursuant to Sections 364.02 and 364.285, Florida Statutes. Further, the amount of the proposed penalty is consistent with penalties previously imposed by this Commission upon other intrastate interexchange telecommunications companies that failed to respond to customer complaints. Therefore, we find it appropriate to impose a penalty upon Global Link Communications, Inc. of \$10,000 for its apparent violation of Section 364.02(13), Florida Statutes, Definitions. We shall cancel Global Link Communications, Inc.'s tariff and remove Registration Number TJ373 from the register and require the company to immediately cease and desist providing intrastate interexchange telecommunications services in Florida, if the company fails to either timely protest this Commission's Order or fails to pay the penalty within fourteen (14) calendar days after the issuance of the Consummating Order. This docket shall be closed administratively upon the receipt of the payment of the penalty or upon the cancellation of the company's tariff and removal of Registration Number TJ373 from the register.

Based on the foregoing, it is

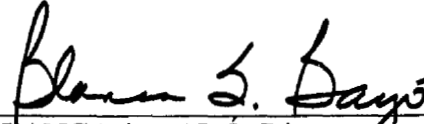
ORDERED by the Florida Public Service Commission that Global Link Communications, Inc. shall pay a penalty of \$10,000 for its apparent violation of Section 364.02(13), Florida Statutes, within fourteen (14) calendar days after the issuance of the Consummating Order, or Global Link Communications, Inc.'s tariff shall be cancelled and Registration Number TJ373 shall be removed from the register and the company required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. 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

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ORDERED that this docket shall be closed administratively upon the receipt of the payment of the penalty or upon the cancellation of the company's tariff and removal of Registration Number TJ373 from the register.

By ORDER of the Florida Public Service Commission this 21st day of April, 2004.



BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

(SEAL)

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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

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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 May 12, 2004.

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.