

State of Florida



ORIGINAL

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

COMMISSION CLERK

**DATE:** April 15, 2005

**TO:** Blanca S. Bayó, Director, Division of the Commission Clerk & Administrative Services

**FROM:** Jeremy L. Susac, Senior Attorney, Office of the General Counsel *JLS*

**RE:** Docket 040158-TX Compliance investigation of EZ Talk Communications, L.L.C. for apparent violation of Rule 25-22.032, F.A.C., Consumer Complaints

Request for permission from Department of Financial Services to Write Off the \$20,000 penalty assessed to EZ Talk Communications, L.L.C.

In October 2003, the Commission received two consumer complaints against EZ Talk Communications, L.L.C. (EZ Talk) and attempted to obtain responses from the company pursuant to Rule 25-2.032(5)(a), Florida Administrative Code. No responses were obtained and Order No. PSC-04-0393-PAA-TX, was issued on April 13, 2004, penalizing the company in the amount of \$20,000, or in the alternative, canceling its certificate, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No Petition for Formal Proceeding was initiated and the Order became final and effective.

On May 24, 2004, staff received notice that EZ Talk had filed for Chapter 11 bankruptcy protection on January 8, 2004, and that the case had been converted to a Chapter 7 bankruptcy proceeding on March 4, 2004. The notice specifically requested that based on 11 U.S.C.S. §362(a)(1) and (3), the commencement or continuation of all actions against EZ Talk must be automatically stayed and is prohibited.

**CMP** \_\_\_\_\_

**COM** \_\_\_\_\_ Upon consideration of the notice, the Commission issued Order No. PSC-04-1253-PAA-TX, on December 17, 2004, vacating Order No. PSC-04-0393-PAA-TX, and granting EZ Talk

**CTR** \_\_\_\_\_ Communications, L.L.C.'s request for cancellation of its CLEC Certificate No. 5530 with an

**ECR** \_\_\_\_\_ effective date of November 30, 2004. The Commission further ordered that the outstanding

**BCL** \_\_\_\_\_ penalty not be sent to the Department of Financial Services for collection, but instead, that the

**OPC** \_\_\_\_\_ Division of the Commission Clerk and Administrative Services should request permission to

\_\_\_\_\_ write off the uncollectible amount.

**MMS** \_\_\_\_\_

**RCA** \_\_\_\_\_ Therefore, staff requests that the Bureau of Administrative Services/Fiscal Services

**SCR** \_\_\_\_\_ Section take the appropriate steps to seek permission from the Department of Financial Services

\_\_\_\_\_ to write off the uncollectible penalty of \$20,000.

**SEC** JLS/js

**OTH** Belcher  
cc: Karen Belcher

DOCUMENT NUMBER-DATE  
03924 APR 21 05

FPSC-COMMISSION CLERK

**STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
BUREAU OF ACCOUNTING  
DELINQUENT ACCOUNTS RECEIVABLE TRANSMITTAL  
(PLEASE PRINT OR TYPE)**

AGENCY FLORIDA PUBLIC SERVICE COMMISSION DATE April 15, 2005 PAGE 1 OF 1  
 CONTACT KAREN BELCHER, DIRECTOR, FISCAL SERVICES  
 PHONE NUMBER 850-413-6273  
 FLAIR ACCOUNT CODE SAMAS ACCOUNT CODES: 61 50 2 573003 610100 00 000300  
 61 74 1 000331 610100 00 001200

**1. Docket No. 040158-TX EZ Talk Communications, LLC Jim Brown, Ronald R. Peterson/Karin H. Berg**

Agency Reference #	Last Name	First	M	Social Security #	DFS use only
One IBM Plaza, Suite 3800; Chicago, IL 60611					
Last Known Address (Include Zip)					
(312) 222-9350	FAX - (312) 840-7352				\$20,000
Home Telephone Work Phone		Principal Amount	Penalty/Interest Amount		Total
Rules 25-2.032(5)(a) and 25-22.029, F.A.C.		2004			8
Penalty/Interest Authority		Date Debt Incurred		Debt Type	
Debt Description, e.g., Drivers License, Property Damage					
Additional Information, e.g., Date of Birth, Drivers License Number, etc					

**2.**

Agency Reference #	Last Name	First	M	Social Security #	DFS use only
Last Known Address (Include Zip)					
Home Telephone Work Phone		Principal Amount	Penalty/Interest Amount		Total
Penalty/Interest Authority		Date Debt Incurred		Debt Type	
Debt Description, e.g., Drivers License, Property Damage					
Additional Information, e.g., Date of Birth, Drivers License Number, etc					

**3.**

Agency Reference #	Last Name	First	M	Social Security #	DFS use only
Last Known Address (Include Zip)					
Home Telephone Work Phone		Principal Amount	Penalty/Interest Amount		Total
Penalty/Interest Authority		Date Debt Incurred		Debt Type	
Debt Description, e.g., Drivers License, Property Damage					
Additional Information, e.g., Date of Birth, Drivers License Number, etc					

**\*\*DEBIT TYPE CODE\*\***

1. RETURNED CHECK 2. NONPAYMENT FOR STATE GOODS/SERVICES 3. DAMAGE TO STATE PROPERTY  
 7. COURT ORDER 8. FINES 9. OVERPAYMENT OF STATE FUNDS

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of EZ Talk Communications, L.L.C. for apparent violation of Rule 25-22.032, F.A.C., Consumer Complaints.	DOCKET NO. 040158-TX ORDER NO. PSC-04-0393-PAA-TX ISSUED: April 13, 2004
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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 IMPOSING A PENALTY ON EZ TALK COMMUNICATIONS, LLC OR CANCELING THEIR CERTIFICATE IN THE ALTERNATIVE

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

EZ Talk Communications, L.L.C. (EZ Talk) is a certificated CLEC based in Stafford, Texas that provides local exchange telephone service in Florida. Our Division of Consumer Affairs (CAF) received two consumer complaints regarding local exchange service provided by EZ Talk. Our staff attempted to contact the company via certified mail and telephone, using the contact information listed in our Master Commission Directory as well as numbers listed on EZ Talk's website; however, none of the telephone numbers were working. To date, EZ Talk has not provided a response to the consumer complaints and is in violation of Rule 25-22.032(5)(a), Florida Administrative Code, Consumer Complaints.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

II. Analysis

Rule 25-22.032(5)(a), Florida Administrative Code, 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.

As stated above, our staff received two customer complaints who claimed that their service was disconnected without cause or notice. On January 14, 2004, our General Counsel sent EZ Talk a certified letter notifying the company that this Commission has not received a response to the consumer complaints, and if we do not receive a response within 10 business days from the date of the letter, EZ Talk is potentially at risk of being penalized and/or having its certificate cancelled. The certified mail receipt indicates that the company received the letter on February 3, 2004, at a location in Naperville, Illinois. To date, EZ Talk has not provided a response to the consumer complaints and is in violation of Rule 25-22.032(5)(a), Florida Administrative Code, Consumer Complaints.

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. 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).

### III. Conclusion

The failure of EZ Talk to provide our staff with written responses to the consumer complaints 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. "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 EZ Talk, 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).

We are vested with jurisdiction over this matter pursuant to Sections 364.183, 364.285, and 364.337, Florida Statutes. Accordingly, this Commission hereby orders a penalty of \$20,000 on EZ Talk for two apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, or cancel EZ Talk's CLEC certificate and require the company to immediately cease and desist providing CLEC services in Florida, if the company fails to timely protest this Commission's Order and fails to pay the penalty within fourteen (14) calendar days after the issuance of the Consummating Order. The amount of the proposed penalty is consistent with penalties previously imposed by this Commission upon other CLECs that have failed to respond to consumer complaints.

Based on the foregoing, it is hereby

ORDERED by the Florida Public Service Commission that EZ Talk is hereby penalized in the amount of \$20,000 for two apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints. The penalty shall be paid to the Florida Public Service Commission within fourteen (14) calendar days after the issuance of the Consummating Order. It is further

ORDER NO. PSC-04-0393-PAA-TX  
DOCKET NO. 040158-TX  
PAGE 4

ORDERED that in the event EZ Talk fails to timely pay the penalty, and fails to protest this Commission's Order within 21 days of its issuance, then EZ Talk's CLEC certificate will be canceled and the company must immediately cease and desist providing CLEC services in Florida. It is further

ORDERED that this docket will be closed administratively upon receipt of the payment of the penalty or upon cancellation of the company's CLEC certificate. It is further

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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

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 13th day of April, 2004.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

(SEAL)

JLS

ORDER NO. PSC-04-0393-PAA-TX  
DOCKET NO. 040158-TX  
PAGE 5

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.

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~~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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 4, 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.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of EZ Talk Communications, L.L.C. for apparent violation of Rule 25-22.032, F.A.C., Consumer Complaints.	DOCKET NO. 040158-TX ORDER NO. PSC-04-1253-PAA-TX ISSUED: December 17, 2004
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The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER CANCELLING CERTIFICATE NO. 5530, VACATING ORDER NO. PSC-04-0393-  
PAA-TX, AND REQUIRING EZ TALK COMMUNICATIONS, L.L.C. TO IMMEDIATELY  
CEASE AND DESIST PROVIDING TELECOMMUNICATIONS

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.

**Discussion of Issues**

In October 2003, this Commission received two consumer complaints against EZ Talk Communications, L.L.C. (EZ Talk) and attempted to obtain responses from the company pursuant to Rule 25-2.032(5)(a), Florida Administrative Code, without success. Therefore, an Order No. PSC-04-0393-PAA-TX, was issued on April 13, 2004, penalizing the company in the amount of \$20,000, or in the alternative, cancelling its certificate, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No Petition for Formal Proceeding was initiated and the Order became final and effective.

On May 24, 2004, we received notice that EZ Talk had filed for Chapter 11 bankruptcy protection on January 8, 2004, and that the case had been converted to a Chapter 7 bankruptcy proceeding on March 4, 2004. Specifically, we received a pleading from the company, which requested pursuant to 11 U.S.C.S. §362(a)(1) and (3), that the commencement or continuation of all actions against EZ Talk be automatically stayed and is prohibited.

DOCUMENT NUMBER-DATE  
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ORDER NO. PSC-04-1253-PAA-TX  
DOCKET NO. 040158-TX  
PAGE 2

On September 9, 2004, an attorney in the US Bankruptcy Trustee's office spoke with our staff and verbally advised them that the company is no longer in business, has no need of its CLEC certificate and that the company does not have funds to pay penalties or fees. In addition, the company advised our staff that a written request to cancel its certificate due to the bankruptcy would be forthcoming. To date we have not received a written request to cancel the certificate.

Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requirements the payment of Regulatory Assessment Fees by January 30 of the subsequent year for telecommunications companies, and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. According to our records, ~~EZ Talk owes the 2003 and 2004 Regulatory Assessment Fees as well as late payment charges for the years 2000 and 2003.~~

In the case at hand, EZ Talk has filed for bankruptcy, and pursuant to 11 U.S.C.S. § 362(b)(4) of the Bankruptcy Code, the filing of a petition for bankruptcy relief acts as an automatic stay that enjoins a governmental entity from exercising its regulatory authority to collect a pre-petition debt. Secured creditors are given the highest priority in the distribution and normally receive all of the distributed assets. Regulatory Assessment Fees, late payment charges, and penalties owed by a company to us are not secured debts, and as a practical matter, are uncollectible in a bankruptcy proceeding where liquidation occurs. As such, we are, in this instance, prevented from collecting the fees owed by EZ Talk.

Accordingly, we hold that the Order No. PSC-04-0393-PAA-TX, issued on April 13, 2004 shall be vacated. EZ Talk Communications, L.L.C.'s request for cancellation of its CLEC Certificate No. 5530 with an effective date of November 30, 2004, due to bankruptcy is hereby granted. We shall notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory late payment charges, not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts. Last we hold that EZ Talk shall immediately cease and desist providing competitive local exchange services in Florida.

We are vested with jurisdiction pursuant to Sections 364.285, 364.336, and 364.337, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-04-0393-PAA-TX, issued on April 13, 2004 is hereby vacated. We shall notify the Division of the Commission Clerk & Administrative Services that any unpaid RAFs, including statutory late payment charges, not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts.. It is further

ORDERED that EZ Talk Communications, L.L.C.'s request for cancellation of its CLEC Certificate No. 5530 with an effective date of November 30, 2004, due to bankruptcy is hereby granted, and the company shall immediately cease and desist providing competitive local exchange services in Florida. It is further

ORDER NO. PSC-04-1253-PAA-TX  
DOCKET NO. 040158-TX  
PAGE 3

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


ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of December, 2004.

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

By:

  
\_\_\_\_\_  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

JLS

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.

ORDER NO. PSC-04-1253-PAA-TX  
DOCKET NO. 040158-TX  
PAGE 4

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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 7, 2005.

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~~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.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of EZ Talk Communications, L.L.C. for apparent violation of Rule 25-22.032, F.A.C., Consumer Complaints.

DOCKET NO. 040158-TX  
ORDER NO. PSC-05-0035-CO-TX  
ISSUED: January 11, 2005

CONSUMMATING ORDER


BY THE COMMISSION:

By Order No. PSC-04-1253-PAA-TX, issued December 17, 2004, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order, in regard to the above mentioned docket. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-04-1253-PAA-TX has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of January, 2005.

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

(SEAL)

JLS

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ORDER NO. PSC-05-0035-CO-TX  
DOCKET NO. 040158-TX  
PAGE 2

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 judicial review of Commission orders that is available pursuant to Section 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.