

BEFORE THE PUBLIC SERVICE COMMISSION

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| In re: Compliance investigation of AAA Reconnect, Inc. for apparent violation of Rule No. 25-4.043, F.A.C., Response to Commission Staff Inquiries, Rule No. 25-24.480(2), F.A.C., Records and Reports, Rules Incorporated, and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees, Telecommunications Companies. | DOCKET NO. 050056-TX<br>ORDER NO. PSC-05-0451-PAA-TX<br>ISSUED: April 28, 2005 |
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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  
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION  
ORDER IMPOSING PENALTIES AND COST OF COLLECTION

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.

**Violation 1**

AAA Reconnect, Inc. (AAA Reconnect) is a certificated competitive local exchange company (CLEC) located in Brooksville, Florida. On April 30, 2004, we granted AAA Reconnect CLEC Certificate No. 8461. This Commission received a consumer complaint regarding slamming by AAA Reconnect (Request No. 623617T) on October 7, 2004. Our staff sent AAA Reconnect a letter via Certified U.S. Mail on December 22, 2004, requesting that the company update its contact information and respond to the consumer complaint. The letter was returned marked unclaimed. As of March 24, 2005, the company has not provided our staff with the necessary reply to the consumer complaint.

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FPSC-COMMISSION CLERK

Rule 25-24.835, Florida Administrative Code, Rules Incorporated, incorporates by reference, Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, which applies to competitive local exchange companies such as AAA Reconnect.

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

We find that AAA Reconnect's failure to provide this Commission with the necessary reply to a consumer complaint is a "willful violation" of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

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 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 Smith 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 AAA Reconnect to provide our staff with a reply to a consumer complaint 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. 3<sup>rd</sup> DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all competitive local exchange companies, like AAA Reconnect, 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, and 364.285, Florida Statutes. Further, the amount of the proposed penalty is consistent with penalties we have previously imposed upon other competitive local exchange companies for similar violations. Therefore, we hereby impose a penalty upon AAA Reconnect, Inc. in the amount of \$10,000 for the company's apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, incorporated by Rule 25-24.835, Florida Administrative Code, Rules Incorporated.

## **Violation 2**

Rule 25-24.835, Florida Administrative Code, Rules Incorporated, incorporates by reference, Rule 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated, which applies to competitive local exchange companies such as AAA Reconnect.

Rule 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated, states:

(2) Each company shall file updated information for the following items with the Division of Competitive Markets and Enforcement and the Division of the Commission Clerk and Administrative Services within 10 days after such changes occur.

(a) The address of the certificate holder's main corporate and Florida offices (if any), including street name and address and post office box, city, state, and zip code.

(b) Telephone number, name, and address of the individual who is to serve as primary liaison with the Commission in regards to the ongoing Florida operations of the certificated company.

On August 27, 2004, AAA Reconnect was acquired by new ownership and the company's former officers, Ray and Jessica Geroux, resigned. Our staff sent AAA Reconnect a

letter via Certified U.S. Mail on December 22, 2004, requesting that the company update its contact information and respond to a consumer complaint. The letter was returned marked unclaimed. Furthermore, our staff was unable to contact the company using the telephone numbers on file with this Commission. Also, the former officers of the company refused to provide our staff with the name of the new owners, citing that they agreed not to disclose the name of the new owners in their sale contract. Further, an automated voice message on Ms. Geroux's cell phone number, which is on file with this Commission, states that she resigned from the company and for the new point of contact, call (877) 540-4999. However, the new point of contact is the original phone number listed in this Commission's Master Directory for the company. That number is not in service. Hence, the contact information we have on file is not accurate and has not been updated to reflect the new ownership and new primary liaison.

We find that AAA Reconnect's failure to provide the company's current contact information is a "willful violation" of Rule 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated.

Pursuant to Section 364.285(1), Florida Statutes, we are 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 Smith 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 AAA Reconnect to provide our staff with the company's current contact information 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. 3<sup>rd</sup> DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all competitive local exchange companies, like AAA Reconnect, 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, and 364.285, Florida Statutes. Further, the amount of the proposed penalty is consistent with penalties previously imposed upon competitive local exchange companies for similar violations. Therefore, we hereby impose a penalty upon AAA Reconnect, Inc. in the amount of \$500 for the company's apparent violation of Rule 25-24.480(2), Florida Administrative Code, Records and Reports; Rules Incorporated, incorporated by Rule 25-24.835, Florida Administrative Code.

### **Violation 3**

Rule 25-24.835, Florida Administrative Code, Rules Incorporated, incorporates by reference, Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees (RAFs), which applies to competitive local exchange companies such as AAA Reconnect.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 364.285, Florida Statutes, we may impose a penalty or cancel a certificate if a company refuses to comply with our rules.

On December 1, 2004, the Division of the Commission Clerk & Administrative Services mailed the 2004 RAF return notice to AAA Reconnect. On February 18, 2005, the Office of General Counsel mailed a delinquent notice via certified mail to the company for nonpayment of its 2004 RAF. AAA Reconnect has not paid the RAF required by Rule 25-4.0161, Florida Administrative Code, for 2004. Also, accrued statutory late payment charges required by Section 350.113(4), Florida Statutes, have not been paid.

We are vested with jurisdiction over this matter pursuant to Sections 350.113, 364.336, 364.337, and 364.285, Florida Statutes. Further the amount of the proposed penalty is consistent with penalties previously imposed upon other competitive local exchange companies for similar

violations. Therefore, we hereby impose a penalty and a cost of collection, together totaling \$500, for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.835, Florida Administrative Code.

ORDERED by the Florida Public Service Commission that AAA Reconnect, Inc. is hereby assessed penalties for the above referenced violations totaling \$11,000 for violations of Rule 25-4.043, 25-24.480(2) and 25-4.0161 Florida Administrative Code. 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

ORDERED that should AAA Reconnect, Inc. fail to timely protest this Order, the facts shall be deemed admitted, the right to a hearing waived, and the penalty shall be deemed assessed. It is further

ORDERED that any protest must identify with specificity the issues in dispute. In accordance with Section 120.80(13)(b), Florida Statutes, issues not in dispute will be deemed stipulated. It is further

ORDERED that should AAA Reconnect, Inc. fail to timely protest this Order, payment of the \$11,000 in penalties must be received within fourteen calendar days after the issuance of the Consummating Order. It is further

ORDERED that if this Order is not protested and the penalty is not received within fourteen calendar days of the issuance of the Consummating Order, CLEC Certificate No. 8461 shall be cancelled administratively and the collection of the past due Regulatory Assessment Fees, including statutory late payment charges shall be referred to the Department of Financial Services for further collection efforts and the company shall be required to cease and desist providing telecommunications services in Florida. It is further

ORDERED that any payments received applicable to the penalties or cost of collection, the cost of collection should be subtracted from the amount received and should be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. Any monetary amount exceeding the cost of collection should be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes.

ORDERED that if this Order is not timely protested, this Docket shall be closed administratively upon: 1) receipt of the company's payment of penalties and cost of collection

and Regulatory Assessment Fees, including statutory late payment charges; 2) or upon cancellation of the company's certificate.

By ORDER of the Florida Public Service Commission this 28th day of April, 2005.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

(SEAL)

JPR

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 Director, Division of the Commission Clerk and Administrative

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Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 19, 2005.

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.