

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Communicate Technological Systems, LLC for apparent violation of Rule 25-24.470, F.A.C. | DOCKET NO. 090519-TI
ORDER NO. PSC-10-0086-PAA-TI
ISSUED: February 16, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

NOTICE OF PROPOSED AGENCY ACTION
ORDER TO IMPOSE 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.

I. Case Background

In April 2009, we received a customer complaint regarding unauthorized long distance charges. The complaint was initially filed against the bill aggregator. A bill aggregator is not a telecommunications company and does not provide telecommunications services. The bill aggregator aggregates billing records for various telecommunications service providers and bills on behalf of the provider.

After receiving the complaint, we sent a copy of the complaint to the bill aggregator. We were later informed by the bill aggregator that it billed the customer on behalf of Communicate Technological Systems, LLC (CTS) and that a copy of the complaint was forwarded to CTS. CTS resolved the customer's complaint and a copy of CTS's response was forwarded to our staff. After receiving CTS's response to the complaint, we determined that CTS was providing intrastate interexchange telecommunications services in Florida and its prior registration as an interexchange telecommunications company (IXC) had been cancelled.

By Order No. PSC-05-1258-PAA-TI, issued December 27, 2005, we ordered the cancellation of CTS' IXC registration and tariff for the company's failure to comply with Section

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364.336, Florida Statutes, unless the company paid a \$500 penalty, and all past due Regulatory Assessment Fees (RAF), along with any accrued statutory late payment charges. CTS did not comply with that order. As a result, the company's IXC registration and tariff were cancelled effective December 31, 2005. Therefore, CTS is not authorized to provide IXC services in Florida.

Our staff sent two letters, via first class mail and certified mail, to the company. The letters informed CTS of its requirement to register and file a tariff. We received the signed certified mail receipt indicating that CTS received our staff's letter. However, the company never responded. During the time when the letters were sent to CTS, IXCs were required to file a tariff with this Commission. However, due to statutory changes made by the Legislature, effective July 1, 2009, IXCs are no longer required to file a tariff with us. Companies now are required to publish schedules showing the rates, tolls, rentals, and charges of the company for services to be performed. Companies can either file a published schedule with this Commission or publish its schedule through other reasonably publicly accessible means.¹

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

II. Analysis

Rule 25-24.470(1), F.A.C., Registration Required, states in pertinent part:

No person shall provide intrastate interexchange telephone service without first . . . providing the company's current contact information with the Division of the Commission Clerk and Administrative Services.

As stated in the case background, after receiving the customer complaint, we contacted CTS, via first class mail and certified mail, and informed the company of its requirement to register as an IXC with this Commission. However, CTS has not registered with the Commission as required, even after being adequately notified of its requirements and provided with sufficient time to meet those requirements.

Therefore, CTS's failure to register as an IXC 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, 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.

¹ Section 364.04, 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).

Thus, CTS’s failure to register 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.

Further, the amount of the proposed penalty is consistent with penalties previously imposed upon intrastate interexchange telecommunications companies that were providing intrastate interexchange services within the state that failed to register with this Commission.

III. Decision

Therefore, we find it appropriate to impose a penalty in the amount of \$25,000 upon CTS for its apparent violation of Rule 25-24.470, F.A.C., Registration Required, to be paid to this Commission within fourteen calendar days after the issuance of the Consummating Order.

This Order shall become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the 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 should be deemed stipulated. If CTS fails to timely file a protest and request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If payment of the penalty is not received within fourteen (14) calendar days after the issuance of the Consummating Order, the penalty should be referred to the Department of Financial Services for collection and the company should 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, published schedule, and payment of the penalty, or upon the referral of the penalty to the Department of Financial Services.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a penalty be imposed upon Communicate Technological Systems, LLC in the amount of \$25,000 for its apparent violation of Rule 25-24.470, F.A.C., Registration Required, to be paid to this Commission within fourteen calendar days after the issuance of the Consummating Order. It is further

ORDERED by the Florida Public Service Commission that if CTS fails to timely file a protest and request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If payment of the penalty is not received within fourteen (14) calendar days after the issuance of the Consummating Order the penalty should be referred to the Department of Financial Services for collection and the company should be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. This docket should be closed administratively upon receipt of the company's current contact information, published schedule, and payment of the penalty, or upon the referral of the penalty to the Department of Financial Services.

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 Office of 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.

By ORDER of the Florida Public Service Commission this 16th day of February, 2010.



ANN COLE
Commission Clerk

(S E A L)

TJB

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 March 2, 2010.

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.