

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation  
of Raven Communications, Inc.  
for apparent violation of  
Sections 364.02 and 364.04,  
Florida Statutes.

DOCKET NO. 030410-TI  
ORDER NO. PSC-03-1012-PAA-TI  
ISSUED: September 9, 2003

The following Commissioners participated in the disposition of  
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER IMPOSING FINE ON RAVEN COMMUNICATIONS, INC.

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.

CASE BACKGROUND

On January 31, 2003, our staff received a complaint regarding  
a prepaid phone card. The prepaid calling services provider listed  
on the phone card was Raven Communications, Inc. (Raven). Our staff  
determined that Raven had not obtained a certificate of public  
convenience and necessity (certificate). At that time, Commission  
rules required that intrastate interexchange telecommunications  
companies (IXCs) providing services within the state obtain a  
certificate.

On February 18, 2003, our staff mailed a certified letter to  
Raven to request that the company investigate the complaint and to

DOCUMENT NUMBER-DATE

08480 SEP-98

FPSC-00124-D-0001 CLERK

notify the company of its requirement to obtain a certificate. A response to this letter was due by March 5, 2003. According to the certified mail return receipt, the company received the letter on February 24, 2003.

On March 14, 2003, our staff received a letter of response from Mr. Hector Duval, President of Raven, stating that the complaint had been resolved, and that the company's IXC certificate application had been mailed on March 6, 2003. On March 31, 2003, our staff mailed a second certified letter to Raven to notify the company that it had not received the company's IXC certificate application. This letter was also sent via facsimile. According to the facsimile Transmission Verification Report, the fax was transmitted successfully. Raven was required to submit the IXC certificate application by April 18, 2003.

On April 28, 2003, our staff opened this docket to address Raven's apparent violation of Sections 364.02 and 364.04, Florida Statutes. On May 16, 2003, the Second certified letter sent to Raven was returned to staff unclaimed.

We are vested with jurisdiction over this matter pursuant to Sections 364.02(13)(g), 364.04, and 364.285 Florida Statutes. Further, the penalties herein are consistent with penalties imposed upon other prepaid calling service providers by this Commission in previous dockets for similar types of apparent rule violations, such as, the failure to obtain a certificate.

#### Apparent Deficiency

Upon receiving a complaint, our staff determined that Raven was providing intrastate interexchange telecommunications services within the state. Our staff then notified Raven of its requirement to obtain an IXC certificate via certified mail. Raven responded in writing, stating that the IXC certificate application was mailed to the Commission on March 6, 2003. After not receiving the application, our staff sent a second letter, via certified mail and facsimile, to Raven. The letter was sent prior to the date of the passage of the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act) and informed the company again of its requirement to obtain a certificate. Our staff requested that Raven submit an IXC certificate application by April

18, 2003. Even though our staff's letters addressed the company's requirement to obtain a certificate, part of the certification process included filing a tariff and providing us with the company's current contact information. As of this date, Raven has not filed a tariff or provided us with its current contact information, which is in apparent violation of Sections 364.02(13) and 364.04, Florida Statutes. We find that the company has been adequately notified of its requirements and has been provided with sufficient time to meet those requirements.

Applicable Florida Statutes

On May 23, 2003, Florida state legislators passed the Tele-Competition Act which no longer requires an IXC providing services within the state to obtain a certificate. However, Section 364.02(13), Florida Statutes, requires each IXC to provide the Commission with information to contact and communicate with the company. 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), 364.285, 364.163, 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....

Further, the Tele-Competition Act did not amend Section 364.04, Florida Statutes. IXCs providing service within the state are still required to file a tariff with the Commission in accordance with Section 364.04(1), Florida Statutes, which states:

Upon order of the commission, every telecommunications company shall file with the commission, and shall print and keep open to public inspection, schedules showing the rates, tolls, rentals, contracts, and charges that a company for service to be performed within the state.

Penalty

We find that Raven's failure to provide us with current contact information and file a tariff is a "willful violation" of

Sections 364.02 (13) and 364.04, Florida Statutes, 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 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 Raven to provide us with current contact information and file a tariff meets the standard for a "refusal to comply" and a "willful violation" as contemplated by the Legislature when enacting section 364.285, Florida Statutes.

Nor could Raven claim that it did not know that it had the duty to provide us with current contact information and file a tariff. "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 Raven 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 (\$25,000) is consistent with penalties previously imposed by the Commission upon IXCs that were providing intrastate interexchange services within the state and failed to obtain a certificate. We find that the act of providing intrastate IXC services within the state without filing a tariff and providing the Commission with current contact information is comparable to providing IXC services within the state without a certificate and should carry the same penalty. Thus, we find that Raven has, by its actions and inactions, willfully violated Sections 364.02(13) and 364.04, Florida Statutes, and impose a \$25,000 penalty on the company to be paid to the Florida Public Service Commission.

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 penalty or referral of the penalty to the Department of Financial Services.

ORDER NO. PSC-03-1012-PAA-TI  
DOCKET NO. 030410-TI  
PAGE 6

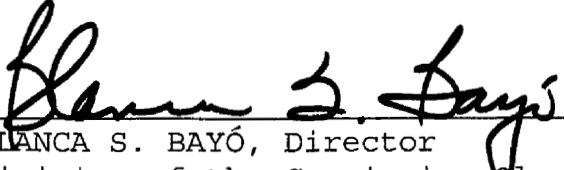
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Raven Communications, Inc. is hereby fined \$25,000 for failure to comply with Section 364.02(13) and 364.04, Florida Statutes. The penalty shall be paid within 14 calendar days after the issuance of the Consummating Order to the Florida Public Service Commission pursuant to Section 364.285(1), Florida Statutes. 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 in the event this Order becomes final, this docket shall be closed administratively upon receipt of penalty payment or referral to the Department of Financial Services for collection.

By ORDER of the Florida Public Service Commission this 9th Day of September, 2003.

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

( S E A L )

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 Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 30, 2003.

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.