

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation
of Florida Commercial PayFon,
Inc. for apparent violation of
Rule 25-4.019, F.A.C., Records
and Reports in General.

DOCKET NO. 021206-TC
ORDER NO. PSC-03-0134-PAA-TC
ISSUED: January 27, 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 PENALTIES

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.

BACKGROUND

This Commission granted Florida Commercial PayFon, Inc.
(Florida Commercial PayFon) Pay Telephone Certificate No. 7545 on
September 1, 2000 in Docket No. 000739-TC.

On January 18, 2002, Florida Commercial PayFon reported to the
Commission a gross intrastate revenue of \$76,652.95 on its
Regulatory Assessment Fee (RAF) Return for the calendar year 2001.
The company paid a RAF in the amount of \$114.98 for 2001.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Commission staff sent Mr. Hozae Milton, President of Florida Commercial PayFon, a letter on May 24, 2002, notifying him that Florida Commercial PayFon had been randomly selected for a RAF audit. Our staff planned to conduct an audit to verify the revenues and RAFs reported on the company's 2001 RAF Return.

On August 30, 2002, Commission staff attempted to call Mr. Milton at (904) 786-2040, but Mr. Milton was not in. On September 23, 2002, Commission staff again attempted to call Mr. Milton at (904) 786-2040, but was still unable to speak with him. Finally, on September 24, 2002, when Commission staff called Mr. Milton yet again, an answering service responded, stating that Mr. Milton was not available and that the company was closed. Later, Mr. Milton returned our staff's call and left a voice message that the best time to call him was 9:00 a.m. the next day.

On September 25, 2002, Commission staff called Mr. Milton at 9:00 a.m., but he was not in. When he returned staff's call, he strongly objected to being audited and stated that "[it is] none of your business." He further stated that he objected to being asked for bank statements, refused to provide any financial documents, and stated that the Commission would have to accept the company's RAF Return as filed.

On October 1, 2002, Commission staff sent Florida Commercial PayFon a certified letter, via U.S. Postal Service, requesting that Mr. Milton contact Commission staff by October 7, 2002, to discuss the audit. The U.S. Postal Service certified mail receipt indicated that Florida Commercial PayFon received the letter on October 3, 2002. Our staff was not contacted by Mr. Milton. Then, on October 9, 2002, Commission staff sent Florida Commercial PayFon a second certified letter, via U.S. Postal Service, informing the company that if it did not provide the necessary financial documents required for the audit by the close of business on October 22, 2002, our staff would initiate legal proceedings to determine if the company should be fined for failure to comply with Commission rules. The U.S. Postal Service certified mail receipt indicated that Florida Commercial PayFon received our staff's second certified letter on October 15, 2002. Mr. Milton did not forward the financial documents as requested.

On November 12, 2002, Commission staff called Mr. Milton and left a message requesting that he return our staff's call within the next two days. Mr. Milton did not return the call.

On December 5, 2002, Commission staff opened Docket No. 021206-TC to address Florida Commercial PayFon's apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports in General.

We are vested with jurisdiction over these matters pursuant to Sections 364.183, 364.285, and 364.337, Florida Statutes.

DISCUSSION

Rule 25-4.019, Florida Administrative Code, Records and Reports in General, states:

(1) Each utility shall furnish to the Commission at such times and in such form as the Commission may require the results of any required tests and summaries of any required records. The utility shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require. All such data, unless otherwise specified, shall be consistent with and reconcilable with the utility's annual report to the Commission.

(2) Where a telephone company is operated with another enterprise, records must be separated in such manner that the results of the telephone operation may be determined at any time.

(3) Upon notification to the utility, members may, at reasonable times, make personal visits to the company offices or other places of business within or without the State and may inspect any accounts, books, records, and papers of the company which may be necessary in the discharge of Commission duties. Commission staff members will present Commission identification cards as the written authority to inspect records. During such visits the company shall provide the staff member(s) with

adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the company's outside auditors.

The Commission has made these rules applicable to pay telephone service companies by incorporating Rule 25-4.019, Florida Administrative Code, into the Rule 25-24.505(1), Florida Administrative Code.

Commission staff routinely selects a random sample of companies for a RAF audit. Florida Commercial PayFon was included in the sample for the companies paying RAFs for the calendar year 2001. To conduct the audit, our staff requested that Florida Commercial PayFon provide documentation substantiating the intrastate revenues reported on its 2001 Pay Telephone Service Provider RAF Return. The minimum documentation required from Florida Commercial PayFon includes:

1. 2001 General Ledger indicating total telecommunications revenues of \$76,652.95, or
2. Cash deposit slips indicating 2001 revenues of \$76,652.95, or
3. Other financial evidence detailing source of revenue and completeness of revenue, that is, receipt books, billing statements, ect., and
4. Invoices from other telecommunications companies indicating amounts paid for the use of the intrastate telecommunications network. (To determine expenses)

As outlined in the factual background, Florida Commercial PayFon has refused to furnish our staff with the required documentation necessary to perform the RAF audit. Commission staff has given Florida Commercial PayFon ample time to provide the documentation but the company has refused to do so. Consequently, we find that Florida Commercial PayFon is in apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports, in General. Furthermore, we find that Florida Commercial PayFon has been uncooperative during the auditing process.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 per day for each offense, 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. Utilities are charged with knowledge of the Commission's statutes and rules and must act accordingly. As is often stated, "[i]t 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).

Based upon the previously described facts, we find that Florida Commercial PayFon's apparent violation of Rule 25-4.019, Florida Administrative Code, is "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., this Commission found that while GTE had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Florida Commercial PayFon's conduct at issue here, meets the standard for a "willful violation."

Accordingly, we find that a \$10,000 penalty shall be imposed on Florida Commercial PayFon for its apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports in General. This penalty is consistent with penalties imposed upon other pay telephone companies by this Commission in previous dockets for similar rule violations. The penalty shall be paid to the Florida Public Service Commission.

Additionally, Florida Commercial PayFon must send to the Commission staff the following documentation:

- The 2001 General Ledger indicating total telecommunications revenues of \$76,652.95, or

- The cash deposit slips indicating 2001 revenues of \$76,652.95, or
- Other financial evidence detailing source of revenue and completeness of revenue, that is, receipt books, billing statements, and
- Invoices from other telecommunications companies indicating amounts paid for the use of the intrastate telecommunications network.

This Order will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Order has filed a protest within 21 days of the issuance of the Proposed Agency Action Order.

If the Order is not protested, and the payment of the penalty and the required documentation are not received within fourteen calendar days after the issuance of the Consummating Order, Pay Telephone Certificate No. 7545 will be cancelled. If Florida Commercial PayFon's certificate is cancelled in accordance with this Order, Florida Commercial PayFon shall immediately cease and desist providing pay telephone services in Florida.

This docket will be closed administratively upon either receipt of the payment of the penalty and the required documentation, or upon cancellation of Pay Telephone Certificate No. 7545.

Based on the foregoing, it is

ORDERED that Florida Commercial PayFon is hereby penalized in the amount of \$10,000 for failure to comply with Rule 25-4.019, Florida Administrative Code, Records and Reports in General. It is further

ORDERED that Florida Commercial PayFon shall send to Commission staff the documentation listed above. It is further

ORDERED that the provisions of this order be issued as a proposed agency action and shall become final and effective upon the issuance of a Consummating Order unless an appropriate

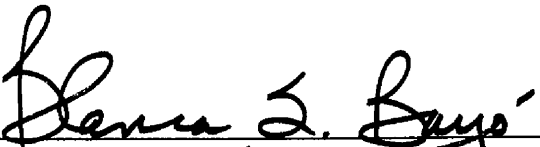
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petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if Florida Commercial PayFon's payment of the penalty and the required documentation are not received within fourteen calendar days after the issuance of the Consummating Order, Pay Telephone Certificate No. 7545 will be cancelled. If Florida Commercial PayFon's certificate is cancelled, Florida Commercial PayFon shall immediately cease and desist providing pay telephone services in Florida. It is further

ORDERED that this docket be closed administratively upon either the receipt of the payment of the penalty and the required documentation, or the cancellation of Pay Telephone Certificate No. 7545.

By ORDER of the Florida Public Service Commission this 27th day of January, 2003.



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

(S E A L)

BRT

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 February 17, 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.