

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-03-1023-PHO-TC
ISSUED: September 17, 2003

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on September 8, 2003, in Tallahassee, Florida, before Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer.

APPEARANCES:

Adam J. Teitzman, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE 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

08811 SEP 17 8

FPSC-03-1023-PHO-TC 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 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.

On January 27, 2003, the Commission issued PAA Order No. PSC-03-0134-PAA-TC which imposed a \$10,000 penalty or cancellation of Pay Telephone Certificate No. 7545 for failure to comply with Rule 25-4.019, Florida Administrative Code, Records and Reports in General. On February 20, 2003, the Commission received a letter from Mr. Milton protesting the PAA Order and requesting a hearing be held on the matter.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u> Lynn Deamer	Staff	1

VII. BASIC POSITIONS

FLORIDA COMMERCIAL PAYFON: (No basic position filed.)

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Should the Commission impose a \$10,000 penalty on Florida Commercial PayFon, Inc. for apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports in General, to be paid to the Florida Public Service Commission, and order the company to submit the required documentation listed in Attachment D, page 15, to the Division of Auditing and Safety?

POSITIONS

FLORIDA COMMERCIAL PAYFON: (No position filed.)

STAFF: Yes. 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, staff requested that the company provide documentation substantiating the intrastate revenues reported on its 2001 Pay Telephone Service Provider RAF Return. The company has refused to furnish staff with the required documentation necessary to perform the RAF audit, and consequently, is in apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports in General. Further, the company was given ample time to provide the required documentation and has been uncooperative during the auditing process.

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., having found that the company 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 "In 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, would meet the standard for a "willful violation."

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Lynn Deamer	Staff	LMD-1	State of Florida Auditor General audit report, dated 12/16/97.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		LMD-2	Sections 350.113 and 364.336, Florida Statutes and Rules Chapter 25-4.0161 and 25-24.505, Florida Administrative Code.
		LMD-3	Memo dated May 23, 2003, including request to audit Florida Commercial PayFon, Inc. and copy of a letter dated May 24, 2003, addressed to Mr. Hozae Milton.
		LMD-4	Lynn Deamer letter to Mr. Milton informing him of the Commission rules and requirements, dated October 1, 2002 and receipt signed October 3, 2002.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		LMD-5	Denise Vandiver letter dated October 9, 2002.
		LMD-6	Rule 25-4.019, Florida Administrative Code and Rule 25-24.505(1), Florida Administrative Code.
		LMD-7	Commission Order No. PSC-03-0134-PAA-TC issued January 27, 2003.
		LMD-8	Information provided by Mr. Milton with letter dated January 31, 2003.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

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XII. PENDING CONFIDENTIALITY MATTERS

None.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

None.

XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

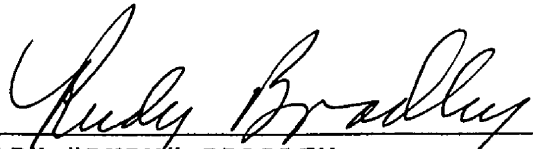
Due to Florida Commercial PayFon, Inc.'s failure to appear at the Prehearing Conference, the hearing scheduled for September 24, 2003 is continued and Commission staff's oral motion to file a recommendation addressing dismissal of Florida Commercial PayFon, Inc.'s protest of PAA Order No. PSC-03-0134-PAA-TC for the September 30, 2003 Agenda is granted.

It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 17th day of September, 2003.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

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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 or judicial review of Commission orders that is available under Sections 120.57 or 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 an administrative hearing or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) 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 or wastewater utility. A motion for reconsideration shall be filed

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with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.