

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-03-1170-FOF-TC
ISSUED: October 20, 2003

The following Commissioners participated in the disposition of
this matter:

BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DISMISSING PROTEST
AND CONSUMMATING ORDER NO. PSC-03-0134-PAA-TC

BY THE COMMISSION:

We 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.

Our 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, our 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, for failure to provide the necessary financial documents required for a RAF audit.

DOCUMENT NUMBER-DATE

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PSC-COMMISSION CLERK

On January 27, 2003, we 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, we received a letter from Mr. Milton protesting the PAA Order and requesting a hearing be held on the matter.

On April 15, 2003, Order No. PSC-03-0493-PCO-TC, Order Establishing Procedure, was issued which set forth the controlling dates in this docket. Florida Commercial PayFon's rebuttal testimony was due to be filed on June 12, 2003. Florida Commercial PayFon failed to file any testimony in this docket. Prehearing Statements were due on August 7, 2003. Florida Commercial PayFon failed to file a Prehearing Statement.

Prior to the occurrence of each controlling date, our staff called Florida Commercial PayFon's answering service and left a message to remind of the upcoming event date and request that a representative contact staff. Our staff was never contacted.

The Notice of Prehearing and Hearing was sent to Florida Commercial PayFon by certified mail. On September 5, 2003, we received the return receipt card signed by Mr. Milton. The prehearing conference was held on September 8, 2003. Florida Commercial PayFon failed to appear.

At the prehearing conference, in response to Florida Commercial PayFon's failure to prefile testimony, to file a prehearing statement, and to appear at the prehearing conference, staff made an oral motion seeking to file a recommendation addressing dismissal of Florida Commercial PayFon's protest. The motion was granted by the Prehearing Officer.

Florida Commercial PayFon failed to prefile testimony, file a prehearing statement, and attend the prehearing conference as required by the Order Establishing Procedure. The Order Establishing Procedure provides that failure of a party to timely file a prehearing statement shall constitute a waiver of any issues not raised by other parties or the Commission. Furthermore, the Order Establishing Procedure provides that any party who fails to attend the prehearing conference, unless excused by the Prehearing

Officer, will have waived all issues and positions raised in the prehearing statement. Because Florida Commercial PayFon waived all issues relative to its protest, there remain no issues to be decided.

We have afforded Florida Commercial PayFon with ample time and opportunity to pursue its case. As noted in the case background, our staff made several attempts to contact Florida Commercial PayFon and each attempt went unanswered.

The purpose of an Order Establishing Procedure is to prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Because Florida Commercial PayFon has failed to return our staff's calls and the postal receipt indicates Florida Commercial PayFon received notice of the prehearing conference, we find Florida Commercial PayFon's repeated failures to meet the requirements of the Order Establishing Procedure constitute abandonment of its protest in this Docket.

Based on Florida Commercial PayFon's failure to comply with the Order Establishing Procedure, we hereby dismiss Florida Commercial PayFon's protest with prejudice. Additionally, PAA Order No. PSC-03-0134-PAA-TC is reinstated and consummated as a Final Order.

Florida Commercial PayFon shall make payment of the penalty and provide the documentation required by PAA Order No. PSC-03-0134-PAA-TC, within fourteen calendar days after the issuance of this Order. If payment of the penalty and the required documentation are not received, Pay Telephone Certificate No. 7545 will be cancelled. Further, if Florida Commercial PayFon's certificate is cancelled, Florida Commercial PayFon shall immediately cease and desist providing pay telephone services in Florida. This docket shall 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

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ORDERED by the Florida Public Service Commission that Florida Commercial PayFon, Inc.'s protest of PAA Order No. PSC-03-0134-PAA-TC is dismissed with prejudice. It is further

ORDERED that PAA Order No. PSC-03-0134-PAA-TC is reinstated and consummated as a Final Order. It is further

ORDERED that Florida Commercial PayFon, Inc. shall make payment of the penalty and provide the documentation required by PAA Order No. PSC-03-0134-PAA-TC, within fourteen calendar days after the issuance of this Order. It is further

ORDERED that if Florida Commercial PayFon, Inc.'s payment of the penalty and the required documentation are not received within fourteen calendar days after the issuance of this 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 20th Day of October, 2003.



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

(S E A L)

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.