

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide pay telephone service by Hozae Milton d/b/a Florida Commercial Payfon, Inc. | DOCKET NO. 040578-TC
ORDER NO. PSC-04-1134-PAA-TC
ISSUED: November 16, 2004

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING
CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE

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.

On June 21, 2004, Hozae Milton d/b/a Florida Commercial PayFon, Inc. (Florida Commercial PayFon) reapplied for a new pay telephone certificate. Mr. Milton's previous pay telephone certificate was cancelled by the Commission in Order No. PSC-03-1170-FOF-TC, issued October 20, 2003, Docket No. 021206-TC, 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.

Generally, an application for new pay telephone certificate must contain the information required for certification as set forth in Sections 364.3375 and 364.335, Florida Statutes, and Rule 25-24.511, Florida Administrative Code. In this case, staff advised Mr. Milton that in order for his new application to be considered, he would need to provide the data requested in Docket No. 021206-TC, petition for a reduction of the \$10,000 penalty imposed in the same Docket, and make a settlement offer as well as request a waiver of Rule 25-24.511(5), F.A.C., Application for Certificate.

Mr. Milton continues to object to the cancellation of his previous pay telephone certificate by the Commission. In the prior case, staff notified Mr. Milton that Florida Commercial PayFon had been randomly selected for a Regulatory Assessment Fee (RAF) audit. Staff attempted to conduct an audit to verify the revenue and RAFs reported on the company's 2001 RAF Return. When Mr. Milton failed to provide staff the necessary financial documents

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required for a RAF audit, 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 Proposed Agency Action (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.

The matter was set for hearing. However, prior to hearing, the case was dismissed, because Florida Commercial PayFon failed to comply with any of the procedural requirements of the Order Establishing Procedure in that Docket. Thereafter, Mr. Milton filed a complaint in Duval County Court seeking, among other things, to have his certificate reinstated. The court, however, dismissed the complaint, indicating that the appropriate remedy would have been to appeal the Commission's decision. Docket No. 021206-TC is now closed.

On June 21, 2004, Mr. Milton submitted a new pay telephone service application for Florida Commercial PayFon, Inc. On July 16, 2004, our staff mailed Mr. Milton a certified letter explaining that Florida Commercial PayFon, Inc.'s certificate had been cancelled in Docket No. 021206-TC. Our staff advised Mr. Milton that in order for his new application to be considered, he would need to provide the data requested in Docket No. 021206-TC, petition for a reduction of the \$10,000 penalty imposed in the same Docket, and make a settlement offer as well as request a waiver of Rule 25-24.511(5), F.A.C., Application for Certificate. Staff outlined these requirements for Mr. Milton and gave him an opportunity to respond.

On July 28, 2004, Mr. Milton provided additional documentation in an attempt to comply with the Commission's 2001 revenue audit. This information was reviewed by the Division of Regulatory Compliance and Consumer Assistance, which found it insufficient and more concerns were raised. Mr. Milton attached 1099-MISC forms for payments he made to vendors in 2001. These are not normally completed for corporations. When our staff questioned Mr. Milton, he became verbally abusive and staff ended the call.

Staff has also found that Florida Commercial PayFon, Inc.'s corporate status with the Florida Secretary of State was administratively dissolved for not submitting an annual report as of September 19, 2003. In addition, Mr. Milton's fictitious name filing for Florida Commercial PayFon expired as of December 31, 2003.

Therefore, it is not in the public interest to grant a certificate, to provide PATS services, to Hozae Milton d/b/a Florida Commercial Payfon, Inc. We are vested with jurisdiction over this matter pursuant to Sections 364.335 and 364.3375, Florida Statutes.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby deny Hozae Milton d/b/a Florida Commercial Payfon, Inc.'s application to provide Pay Telephone service. 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.

By ORDER of the Florida Public Service Commission this 16th day of November, 2004.



BLANCA S. BAYO, 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 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.

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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 December 7, 2004.

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.