

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against BFM International for violations of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required.

Docket No. 980181-TI  
Order No. PSC-98-0494-SC-TI  
Issued: April 9, 1998

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RESPONSE TO ORDER TO SHOW CAUSE

BFM International ("BFM") was hired by Telecard Dispensing Corp. ("TDC") to provide certain back-office functions for TDC for calling cards to be issued by TDC. TDC made numerous express and implied representations which turned out to be untrue. For example, TDC knew that BFM was a start-up company formed expressly for the purpose of providing back-office services to TDC in its calling card business. TDC knew that BFM was not certificated. Even though TDC was not certificated, TDC induced BFM to provide these back-office services with full knowledge that neither company would be certificated. TDC represented to BFM that it had provided calling card services in the past and that it was legally authorized to do so.

ACK \_\_\_\_\_ BFM provided services for TDC (which BFM believed was a certificated entity) for  
AFA \_\_\_\_\_  
APP \_\_\_\_\_ approximately two months. Shortly after services commenced, BFM realized that  
CAF \_\_\_\_\_  
CMU | \_\_\_\_\_ numerous representations by TDC to BFM were false. The most notable was the mix of  
CTR \_\_\_\_\_ international traffic to domestic traffic which was resulting in a substantial monetary loss  
EAC \_\_\_\_\_  
LE \_\_\_\_\_ to BFM. At a result, BFM began investigating all of the representations by TDC to  
LIP \_\_\_\_\_ determine whether it could terminate its agreement with TDC for fraud in the inducement.  
OPI \_\_\_\_\_  
RCH \_\_\_\_\_ BFM ascertained that TDC was not a certificated carrier and, upon the advice of counsel,  
SEC | \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

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notified TDC that BFM could no longer provide any services to TDC. BFM gave TDC an opportunity to port the relevant 800 numbers to a certificated carrier and, ultimately, BFM terminated providing services to TDC.

TDC then contacted the Florida Attorney General's office as well as the Commission to lodge complaints. TDC also solicited some of its distributors to do likewise. While there have been a few consumer complaints (believed to be less than 10 in total) that active cards were deactivated, this matter came to the Commission's attention as a direct result of TDC's complaints and not as a result of consumer complaints.

TDC is no stranger to the Commission. TDC has repeatedly put back-office providers out of business with the same or similar tactics. Steve Tashman, the man behind TDC, is likewise no stranger to the Commission. Upon information and belief, staff for the Commission is conducting a more in-depth review of the activities of TDC and Steve Tashman.

TDC had advance notice that BFM would stop processing cards issued by TDC. TDC stopped issuing these cards which it knew they would not be serviced in the future and, as noted in the Commission's Order to Show Cause, TDC reimbursed customers who purchased non-working pre-paid calling cards.<sup>1</sup>

It is BFM's position that it did not provide intrastate telephone service. TDC provided this service as it had in the past and has again since October 1997 through other

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<sup>1</sup>As a practical matter, customers who purchased non-working cards typically returned them to the place of purchase where they exchanged them for new cards (as contrasted with being "reimbursed" as represented by TDC). This is why so few complaints have been received.

back-office providers. TDC issued and distributed the cards. BFM was a purely back-office supplier to TDC and in good faith believed that TDC was properly certificated. BFM engaged in no advertising or customer contact.

Section 264.285, Florida Statutes, authorizes a monetary penalty for the "willful" violation of a Commission rule. While "ignorance of the law is no excuse," the basic precept of scienter bars imposing a monetary sanction against BFM where it in good faith believed that TDC was certificated and that BFM was not providing intrastate telephone service. BFM did not intend to provide intrastate telephone service – it reasonably believed that TDC was providing that service. Accordingly, BFM did not intend to do the act which constituted a violation of a Commission rule. When BFM discovered that TDC was not certificated, BFM promptly discontinued service to TDC.

Based upon the foregoing, TDC respectfully submits that a monetary fine against BFM is not warranted in this instance.

Respectfully submitted,

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