

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 980181-TI
ORDER NO. PSC-98-0924-AS-TI
ISSUED: July 7, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER APPROVING SETTLEMENT

BY THE COMMISSION:

On October 1, 1997, we received information that BFM International (BFM) was allegedly providing debit card services without a certificate from this Commission. In addition, we received a complaint from Steven Wiener of Telecard Dispensing Corp. (TDC), a prepaid card distributor, against BFM International (BFM.) TDC entered into a contract with BFM and purchased over 500,000 prepaid debit cards that had a street value of over \$5,000,000. According to TDC, BFM informed TDC that as of October 1, 1997, it was going to disconnect service on all cards.

On October 3, 1997, our staff mailed a certified letter to Mr. Michael Pardes of BFM requesting answers to questions regarding the complaint filed by TDC. Staff received a letter dated October 21, 1997, from Mr. Ronald J. Marlowe, legal counsel for BFM, responding to the complaint. This letter explained that BFM provided interexchange service to TDC beginning in July, 1997, that BFM intends to credit TDC for the non-working cards, and that BFM has ceased operation.

Based on the apparent rule violation, we opened this docket to investigate whether BFM should be required to show cause why it should not be fined \$25,000 for operating without a certificate

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POST-REPORTING

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pursuant to Section 364.285, Florida Statutes. On April 9, 1998, we issued the Show Cause order, Order No. PSC-98-0494-SC-TI. Subsequently, BFM through its attorney, Ronald J. Marlowe, submitted an offer to settle the case. (See Attachment A.) Mr. Marlowe indicated that BFM does not have the financial resources to pay the \$25,000 fine. He also revealed that BFM has only a little over \$8,000 in its bank account. Without an admission of any wrongdoing, BFM is proposing the payment of a \$7,000 voluntary contribution with the balance remaining to be used for legal and accounting fees and to reimburse any end users who might come forward within the next six (6) months with dishonored cards.

Since we have not previously sanctioned BFM, all the customers affected have been made whole, and BFM has ceased operation, we believe \$7,000 is a reasonable settlement offer. Accordingly, we hereby accept BFM's proposed settlement offer in lieu of continuing the show cause proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BFM International's settlement proposal as summarized in the body of this Order and included as Attachment A is approved. It is further

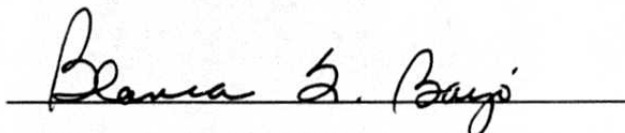
ORDERED that BFM International shall pay the \$7,000 voluntary contribution to the Florida Public Service Commission within 10 days of the issuance of this Order. It is further

ORDERED that upon receipt of the \$7,000 voluntary contribution, it shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that upon the remittance of the \$7,000 voluntary contribution, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 7th
day of July, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

WPC

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 Records and Reporting, 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 Records and reporting 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.

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ATTACHMENT A

LAW OFFICES OF
MARTENS DUNAJ MARLOWE DAVIS & MARLOWE
A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS
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SUITE E
NEW PORT RICHEY, FLORIDA 34652
(813) 376-9599
FACSIMILE (813) 376-3146

REPLY TO: MIAMI

April 2, 1998

Rick Moses
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: **BFM International**
Docket 980181-TI
Our File No. 2654.014

Dear Mr. Moses:

This letter is a follow-up to our conference call with Brenda Hawkins and Carmencita Pena on March 25, 1998.

As you know, the undersigned represents BFM International in this matter. BFM International briefly provided calling card support for Telecard Dispensing Corp. In or about September 1997, shortly after the cards were issued by TDC, BFM International determined that certain representations by TDC to BFM concerning traffic termination points were grossly inaccurate. These misrepresentations caused BFM to operate at a significant loss while providing services to TDC. Upon further investigation, BFM ascertained that TDC was not a certificated entity. As BFM was not certificated, it promptly discontinued providing services to TDC. In advance of terminating service, however, BFM advised TDC that it could port the relevant 800 numbers to a certificated carrier so that the calling cards would continue to work. On or about October 1, 1997, BFM discontinued providing service on these calling cards.

From all indications, very few cards reached end-users which were not exhausted. As you know, calling cards tend to be consumed quickly by end-users. Because of the advance notice by BFM to TDC that it would discontinue providing services on these cards, TDC stopped issuing the cards and substituted cards which used a different carrier (presumably certificated) in advance of the cut-off date.

BFM has knowledge of only a few cards which were actually purchased by end-users (as contrasted with distributors who were provided replacement cards by TDC) which were not exhausted. BFM has and intends to continue to fully reimburse end-users for

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those cards to the extent that BFM becomes aware of their existence. BFM's policy is to reimburse end-users for 100% of the card value regardless of the unused amount left on the card at the time BFM stopped providing support services to TDC on these cards.

It is BFM's position that this situation is the responsibility of TDC and that TDC should be held responsible for the problems created. From all indications, TDC has a pattern and practice of misrepresenting their authority to issue calling cards and traffic terminations points.

BFM ceased providing any services for TDC (or any other entity) long before this matter came to the attention of the FPSC. Upon the advice of counsel, BFM stopped providing services to TDC inasmuch as it was anticipated that if it failed to do so it would receive a cease and desist order from the FPSC commanding it to cease providing services until and unless TDC was or became certificated.

This matter is not consumer driven. After BFM ceased providing services to TDC, TDC contacted the Florida Attorney General's office and the Florida Public Service Commission. TDC also asked its distributors to do likewise even though the distributors were made whole by TDC which replaced the cards with new cards.

BFM does not have the financial resources to pay the \$25,000.00 fine recommended by staff to the Commission. At this time, BFM has just over \$8,000.00 in its bank account. BFM has ceased all operations and will not provide calling card services to any entity in the future. Moreover, the principals of BFM agree that they will not provide calling card services or services for calling card providers without being certificated.

BFM is desirous of resolving this matter. Accordingly, but without any admission of wrongdoing, I have been authorized to propose the payment by BFM of the sum of \$7,000.00. The balance of the funds currently held in BFM's bank account will be used for legal and accounting fees and to reimburse any end-users who might come forward within the next six (6) months with dishonored cards.

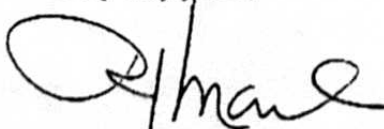
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ATTACHMENT A

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Please contact me to discuss whether this sets forth an acceptable basis for resolution of this matter and whether we can postpone the response date on any Order to Show Cause while this proposal is considered by staff and the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Marlowe". The signature is written in a cursive style with a large initial "R" and a long horizontal stroke.

Ronald J. Marlowe