

ORIGINAL

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
FILED: August 7, 2003

COMMISSION
CLERK

03 AUG - 7 AM 10: 38

RECEIVED-FPSC

STAFF'S PREHEARING STATEMENT

Pursuant to Order No. PSC-03-0493-PCO-TC, the Staff of the Florida Public Service Commission files its Prehearing Statement.

a. All Known Witnesses

Lynn Deamer (Direct)

b. All Known Exhibits

Exhibit LMD-1 - State of Florida Auditor General audit report, dated December 16, 1997.

Exhibit LMD-2 - Sections 350.113 and 364.336, Florida Statutes and Rules Chapter 25-4.0161 and 25-24.505, Florida Administrative Code.

Exhibit 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.

Exhibit 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.

Exhibit LMD-5 - Denise Vandiver letter dated October 9, 2002, informing Mr. Milton of the Commission rules and listing specific information that must be provided and return receipt signed October 15, 2002.

AUS _____
CAF _____
CMP _____
COM 3 _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC 1 _____
OTH _____

DOCUMENT NUMBER-DATE

07216 AUG-7 03

FPSC-COMMISSION CLERK

- Exhibit LMD-6 - Rule 25-4.019, Florida Administrative Code and Rule 25-24.505(1), Florida Administrative Code.
- Exhibit LMD-7 - Commission Order No. PSC-03-0134-PAA-TC issued January 27, 2003.
- Exhibit LMD-8 - Information provided by Mr. Milton with letter dated January 31, 2003.

c. Staff's Statement of Basic Position

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 stated herein.

d. Staff's Position on the Issues

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?

Position: 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."

e. Pending Motions

None.

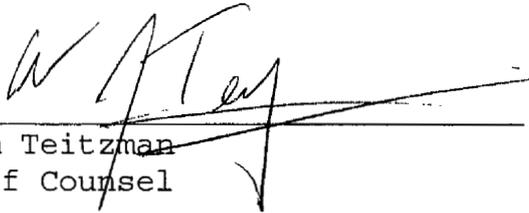
f. Pending Confidentiality Claims or Requests

None.

g. Compliance with Order No. PSC-03-0493-PCO-TC

Staff has complied with all requirements of the Order Establishing Procedure entered in this docket.

Respectfully submitted this 7th day of August, 2003.



Adam Teitzman
Staff Counsel

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Gerald L. Gunter Building - Room 370
Tallahassee, Florida 32399-0863
(850) 413-6199

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

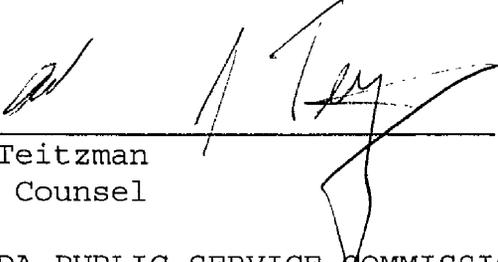
In re: Compliance investigation
of Florida Commercial PayFon,
Inc. for apparent violation of
Rule 25-4.019, F.A.C., Records
and Reports in General.

DOCKET NO. 021206-TC
FILED: August 7, 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true and correct copy of Staff's
Prehearing Statement has been furnished by U.S. Mail, this 7th
day of August, 2003, to the following:

Florida Commercial PayFon, Inc.
5625 Verna Blvd., Suite 9
Jacksonville, FL 32205-4418



Adam Teitzman
Staff Counsel

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Gerald L. Gunter Building - Room 370
Tallahassee, Florida 32399-0863
(850)413-6199