



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

COMMISSION
CLERK

SEP 18 PM 12:08

RECEIVED FPSC

DATE: SEPTEMBER 18, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *AT PR*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS) *DB*
DIVISION OF AUDTING AND SAFETY (VANDIVER) *W* *RLT*

RE: DOCKET NO. 021206-TC - COMPLIANCE INVESTIGATION OF FLORIDA
COMMERCIAL PAYFON, INC. FOR APPARENT VIOLATION OF RULE 25-
4.019, F.A.C., RECORDS AND REPORTS IN GENERAL.

AGENDA: 09/30/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\021206.RCM

CASE BACKGROUND

This Commission 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.

Commission 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.

DOCUMENT NUMBER-DATE

08912 SEP 18 03

FPSC-COMMISSION CLERK

DOCKET NO. 021206-TC

DATE: September 18, 2003

On December 5, 2002, Commission 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.

On January 27, 2003, the Commission 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, the Commission 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, 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. Staff was never contacted.

The Notice of Prehearing and Hearing was sent to Florida Commercial PayFon by certified mail. On September 5, 2003, the Commission 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.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission dismiss Florida Commercial PayFon's protest of PAA Order No. PSC-03-0134-PAA-TC?

RECOMMENDATION: Yes. The Commission should dismiss Florida Commercial PayFon, Inc.'s protest of PAA Order No. PSC-03-0134-PAA-TC. Florida Commercial PayFon's failure to prefile testimony, file a prehearing statement, and appear at the prehearing conference constitute waiver of all issues in accordance with the Order Establishing Procedure, Order No. PSC-03-0493-PCO-TC, and there remain no issues to be decided by the Commission. **(TEITZMAN)**

STAFF ANALYSIS: 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 by the Commission.

Staff believes the Commission has afforded Florida Commercial PayFon with ample time and opportunity to pursue its case. As noted in the case background, staff has made several attempts to contact Florida Commercial PayFon and each attempt has gone 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 staff's calls and the postal receipt indicates Florida Commercial PayFon received notice of the prehearing conference, staff believes 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, staff recommends that the

DOCKET NO. 021206-TC
DATE: September 18, 2003

Commission dismiss Florida Commercial PayFon's protest with prejudice. Additionally, staff recommends that PAA Order No. PSC-03-0134-PAA-TC be reinstated and consummated as a Final Order.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 1, Florida Commercial PayFon should 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 the Commission's Order from this recommendation. If payment of the penalty and the required documentation are not received, Pay Telephone Certificate No. 7545 should be cancelled. Further, if Florida Commercial PayFon's certificate is cancelled, Florida Commercial PayFon should be ordered to immediately cease and desist providing pay telephone services in Florida. This docket should 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. **(TEITZMAN)**

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 1, this docket should be closed administratively upon receipt of the payment of the penalty and documentation required by PAA Order No. PSC-03-0134-PAA-TC or cancellation of the company's certificate.