

State of Florida



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-

DATE: October 21, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (McCoy)
Office of the General Counsel (Rockette-Gray)
Division of Regulatory Compliance and Consumer Assistance (Vandiver)

RE: Docket No. 040578-TC – Application for certificate to provide pay telephone service by Hozae Milton d/b/a Florida Commercial Payfon, Inc.

AGENDA: 11/02/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040578.RCM.DOC

Case Background

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.

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 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, staff mailed Mr. Milton a certified letter explaining that Florida Commercial PayFon, Inc.'s certificate had been cancelled in Docket No. 021206-TC. 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 staff with 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 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.

Discussion of Issues

Issue 1: Should the Commission grant Hozae Milton d/b/a Florida Commercial PayFon, Inc. a pay telephone certificate?

Recommendation: No. (McCoy, Rockette-Gray, Vandiver)

Staff Analysis:

Staff believes that the Commission has afforded Mr. Milton ample time and opportunity to comply with the Commission's previous compliance audit. However, Mr. Milton has still not provided the necessary information and Florida Commercial PayFon, Inc. is no longer an active Florida corporation. Furthermore, Commission Rule 25-24.511(5), Application for Certificate, Florida Administrative Code, states:

Only one certificate per applicant will be granted. A new certificate will not be granted to any applicant who has previously had a certificate involuntarily cancelled.

Therefore, staff recommends that the Commission deny Hozae Milton d/b/a Florida Commercial PayFon, Inc.'s request for a pay telephone certificate.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon issuance of a consummating order. (Rockette-Gray)

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.