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FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

JUNE 4, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC NCB*  
DIVISION OF COMMUNICATIONS (HAWKINS) *BSPH*  
DIVISION OF CONSUMER AFFAIRS (C. PEÑA) *C. R. Peña*

RE: DOCKET NO. 980181-TI - INITIATION OF SHOW CAUSE  
PROCEEDINGS AGAINST BFM INTERNATIONAL FOR VIOLATION OF  
RULE 25-24.470, FLORIDA ADMINISTRATIVE CODE, CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED.

AGENDA: 06/16/98 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\980181.RCM

CASE BACKGROUND

On October 1, 1997, staff received information that BFM International (BFM) was allegedly providing debit card services without a certificate from this Commission. In addition, staff 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. BFM, according to TDC, informed TDC that as of October 1, 1997, it was going to disconnect service on all cards. On October 3, 1997, 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. From this letter, staff learned 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, staff 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 in

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the state pursuant to Section 364.285, Florida Statutes. After the March 24, 1998, Agenda, a tele-conference was held the next day with staff and BFM's attorney, Ronald J. Marlowe, who 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 recommended by staff. 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 \$7,000 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.

ISSUE I: Should the Commission accept the settlement offer proposed by BFM International to resolve the apparent violation of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. (HAWKINS)

STAFF ANALYSIS: On March 25, 1998, staff had a conference call with Mr. Marlowe, legal counsel for BFM. He revealed that BFM briefly provided calling card service for TDC. Shortly after the cards were issued, BFM determined that certain representations by TDC to BFM concerning traffic termination points were grossly inaccurate; therefore, BFM discontinued service to the cards.

On April 2, 1998, staff received a faxed response (See Attachment A) from BFM. BFM offered this response as a proposed settlement for the Commission's approval in lieu of continuing the show cause proceeding. Company principals of BFM also state that should they decide to provide calling card services or services to any entity in the future, they will first apply for certification with the Commission.

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BFM has not been previously sanctioned by the Commission, since all the customers affected have been made whole and BFM has ceased operation, staff believes \$7,000 is a reasonable settlement offer. Therefore, the Commission should accept BFM's proposed settlement and forego a show cause proceeding. The \$7,000 should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Upon the Commission's approval of staff's recommendation in Issue 1 and the remittance of the \$7,000, this docket should be closed. The \$7,000 should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (COX)

STAFF ANALYSIS: Upon the approval of staff's recommendation in Issue 1, and BFM's remittance of the \$7,000 settlement, this docket should be closed. The monies 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.

LAW OFFICES OF  
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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 Carmelita 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 certified.

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 certified.

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.

Martine Dunaj Marlowe Davis & Marlowe

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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,



Ronald J. Marlowe

Martens Dunaj Marlowe Davis & Marlowe