

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-

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COMMISSION  
CLERK

**DATE:** January 9, 2003

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

**FROM:** DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS) *DB*  
DIVISION OF AUDITING AND SAFETY (VANDIVER) *W*  
OFFICE OF THE GENERAL COUNSEL (B. TAYLOR) *BRT JK*

**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:** 01/21/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

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

CASE BACKGROUND

- September 1, 2000 - In Docket No. 000739-TC, the Commission granted Florida Commercial PayFon, Inc. (Florida Commercial PayFon) Pay Telephone Certificate No. 7545.
- January 18, 2002 - Florida Commercial PayFon reported 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.
- May 24, 2002 - Staff sent Mr. Hozae Milton, President of Florida Commercial PayFon, a letter (Attachment A) notifying him that Commission staff will conduct an audit to verify the revenues and RAFs reported in the company's 2001 RAF Return.

DOCUMENT NUMBER-DATE  
00280 JAN-98

PSC-COMMISSION CLERK

DOCKET NO. 021206-TC  
DATE: January 9, 2003

- August 30, 2002 - Staff attempted to call Mr. Milton at 904-786-2040, but Mr. Milton was not in.
- September 23, 2002 - Staff attempted to call Mr. Milton again at 904-786-2040, but was unable to speak with him.
- September 24, 2002 - Staff called Mr. Milton at 904-786-2040. An answering service responded and indicated that Mr. Milton is not available and the company is closed. Mr. Milton returned staff's call and left a voice message that the best time to call him was 9:00 a.m. the next day.
- September 25, 2002 - Staff called Mr. Milton at 9:00 a.m., but he was not in. Mr. Milton returned staff's call and strongly objected to being audited and stated that "[it is] none of your business." He further stated that he objected to being asked for bank statements, refused to provide any financial documents, and stated that the Commission would have to accept the company's RAF Return as filed.
- October 1, 2002 - Staff sent Florida Commercial PayFon a certified letter via U.S. Postal Service (Attachment B) requesting that Mr. Milton contact staff by October 7, 2002, to discuss the audit. The U.S. Postal Service certified mail receipt (Attachment C) indicates that Florida Commercial PayFon received the letter on October 3, 2002.
- October 9, 2002 - Staff sent Florida Commercial PayFon a second certified letter via U.S. Postal Service (Attachment D) informing the company that if it did not provide the necessary financial documents required for the audit by the close of business on October 22, 2002, staff would initiate legal proceedings to determine if the company should be fined for failure to comply with Commission rules. The U.S. Postal Service certified mail receipt (Attachment E) indicates that Florida Commercial PayFon received staff's second certified letter on October 15, 2002.
- November 12, 2002 - Staff called Mr. Milton and left a message requesting that he return staff's call within the next two days. Mr. Milton did not return staff's call.

DOCKET NO. 021206-TC  
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- December 5, 2002 - 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.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.183 and 364.285, Florida Statutes. Further, staff's recommended penalty is consistent with penalties imposed upon other pay telephone companies by the Commission in previous dockets for similar apparent rule violations. Accordingly, staff believes the following recommendations are appropriate.

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**DISCUSSION OF 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?

**RECOMMENDATION:** Yes. (Buys, B. Taylor, Vandiver)

**STAFF ANALYSIS:** Rule 25-24.505(1), Florida Administrative Code, Scope, incorporates Rule 25-4.019, Florida Administrative Code, by reference into the rules applicable to pay telephone service companies. Rule 25-4.019, Florida Administrative Code, Records and Reports in General, states:

(1) Each utility shall furnish to the Commission at such times and in such form as the Commission may require the results of any required tests and summaries of any required records. The utility shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require. All such data, unless otherwise specified, shall be consistent with and reconcilable with the utility's annual report to the Commission.

(2) Where a telephone company is operated with another enterprise, records must be separated in such manner that the results of the telephone operation may be determined at any time.

(3) Upon notification to the utility, members may, at reasonable times, make personal visits to the company offices or other places of business within or without the State and may inspect any accounts, books, records, and papers of the company which may be necessary in the discharge of Commission duties. Commission staff members will present Commission identification cards as the written authority to inspect records. During such visits the company shall provide the staff member(s) with adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the company's outside auditors.

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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 minimum documentation required as listed in Attachment D, page 15, includes:

1. 2001 General Ledger indicating total telecommunications revenues of \$76,652.95, or
2. Cash deposit slips indicating 2001 revenues of \$76,652.95, or
3. Other financial evidence detailing source of revenue and completeness of revenue, that is, receipt books, billing statements, ect., and
4. Invoices from other telecommunications companies indicating amounts paid for the use of the intrastate telecommunications network. (To determine expenses)

As outlined in the case background, 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, staff believes that the company has been given ample time to provide the required documentation and has been uncooperative during the auditing process.

Staff also believes that 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."

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 per day for each offense, if such

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DATE: January 9, 2003

entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, and the payment of the penalty and the required documentation are not received within fourteen calendar days after the issuance of the Consummating Order, Pay Telephone Certificate No. 7545 should be cancelled. Further, if Florida Commercial PayFon's certificate is cancelled in accordance with the Commission's Order from this recommendation, 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. **(B. Taylor)**

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed administratively upon receipt of the payment of the penalty and required documentation or cancellation of the company's certificate.

DOCKET NO. 021206-TC  
DATE: January 9, 2003

Attachment A

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



DIVISION OF AUDITING & SAFETY  
DANIEL M. HOPPE, DIRECTOR  
(850) 413-6480

## Public Service Commission

May 24, 2002

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

**RE: Undocketed; Florida Commercial PayFon, Inc.; (TG732)**  
**Audit Request: RAF Compliance Audit; Audit Control No. 02-112-1-9**

Dear Mr. Milton:

The Florida Public Service Commission will conduct an audit to verify the revenues and Regulatory Assessment Fees (RAF) reported in your 2001 RAF filing. Your company was chosen as part of our random sample of all companies paying RAF for 2001. Lynn Deamer, the Tallahassee district office supervisor, will coordinate this audit. Ms. Deamer can be reached at (850) 413-6416. These audits will be scheduled after the current workload. Therefore, you may hear from the auditor assigned in June or July to set up the requirements of the audit.

Commission rule states that "upon notification to the utility, members may, at reasonable times, make personal visits to the company offices or other places of business within or without the State and may inspect any accounts, books, records, and papers of the company which may be necessary in the discharge of Commission duties. During such visits the company shall provide the staff member(s) with adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the company's outside auditors.

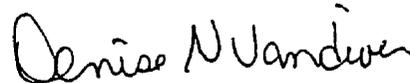
This audit is designed to reconcile the numbers reported in the RAF filing to the utility's records and perform tests to verify that the utility's records are accurate. For those companies with records out of state, we do not intend to travel out of state unless the utility cannot provide the necessary documentation by mail or fax. Commission rule states that "any company that keeps its records outside the State shall reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out-of-state records of the company or its affiliates."

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Mr. Hozae Milton  
Page 2  
May 24, 2002

This will be a limited scope audit and will only result in a staff memorandum describing the company's compliance with applicable rules and statutes regarding regulatory assessment fees. This memorandum will be issued before November 30, 2002. If the company is not in compliance with applicable rules and regulations, a copy of the memorandum will be sent to the company and any future action, if any, will be determined at that time. Questions regarding the audit or audit staff should be directed to the district supervisor or myself. My phone number is (850) 413-6487.

Sincerely,



Denise N. Vandiver  
Bureau Chief of Auditing

DNV/jcp  
Attachments

cc: Division of Auditing and Safety (Tallahassee District Office Supervisor, File Folder)

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



DIVISION OF AUDITING & SAFETY  
DANIEL M. HOPPE, DIRECTOR  
(850) 413-6480

# Public Service Commission

October 1, 2002

Mr. Hozae Milton, President  
Florida Commercial Payfon, Inc.  
5625 Verna Blvd., Suite 9  
Jacksonville, FL 32205-4418

*Certified Letter*  
*7000 0600 0026 4145 4139*

**Re: Undocketed; Florida Commercial PayFon, Inc.; Company Code TG732; Regulatory Assessment Fee Audit; Audit Control Number 02-112-1-9**

Dear Mr. Milton:

On May 24, 2002, the Florida Public Service Commission sent your company a letter informing you that our office will conduct an audit to verify the revenues and regulatory assessment fee reported on your 2001 Regulatory Assessment Fee filing. A copy of this letter is attached.

I understand that you spoke with Bob Moore, the auditor assigned to this audit, on September 25, 2002 and told him that he could not have access to your records.

I called and left a message with your answering service on September 27, 2002. In the message I asked that you contact me that afternoon or the following Monday afternoon (September 30, 2002) so that we can discuss this audit. I did not receive a reply from you.

Commission Rule 25-4.019, F.A.C., Records and Reports in General, states that the utility shall furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require. A copy of this rule is attached.

Please be advised that failure to cooperate may result in a recommendation that your company be show caused as to why it should not be fined for failure to comply with Commission rules by not responding to audit requests.

It is imperative that you contact me and we discuss this matter by October 7, 2002. My phone number is (850) 413-6416.

Sincerely,

A handwritten signature in cursive script that reads "Lynn M. Deamer".

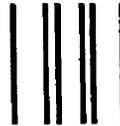
Lynn M. Deamer  
Tallahassee District Audit Supervisor

Enclosures (2)

cc: Ms. Denise Vandiver, Chief, Bureau of Auditing

| SENDER: COMPLETE THIS SECTION  | COMPLETE THIS SECTION ON DELIVERY   |  |
|--|---|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> | A. Received by (Please Print Clearly)   | B. Date of Delivery  |
|  | <p><i>[Signature]</i> 10-3-02</p>   |  |
| 1. Article Addressed to:<br><br>Mr. Hozae Milton, President<br>Florida Commercial Payfon, Inc.<br>5625 Verna Blvd., Suite 9<br>Jacksonville, FL 32205-4418   | C. Signature  | <input type="checkbox"/> Agent<br><input type="checkbox"/> Addressee |
|  | <p><i>[Signature]</i></p>   |  |
|  | D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES, enter delivery address below: <input type="checkbox"/> No   |  |
|  | <p><i>[Circular Postmark: OCT 3 2002 JACKSONVILLE FL]</i></p>   |  |
|  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. |  |
|  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes  |  |
| 2. Article Number (Copy from service label) <b>7000 0600 0026 4145 4139</b>  |   |  |
| PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952   |   |  |

UNITED STATES POSTAL SERVICE



• Sender: Please print your name, address, and ZIP+4 in this box •

FLORIDA PUBLIC SERVICE COMMISSION  
 BUREAU OF AUDITING, SUITE 215  
 2540 SHUMARD OAK BLVD.  
 TALLAHASSEE, FL 32399-0850

01



DOCKET NO. 021206-TC  
DATE: January 9, 2003

Attachment D

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



DIVISION OF AUDITING & SAFETY  
DANIEL M. HOPPE, DIRECTOR  
(850) 413-6480

## Public Service Commission

October 9, 2002

Mr. Hozae Milton, President  
Florida Commercial Payfon, Inc.  
5625 Verna Blvd., Suite 9  
Jacksonville, FL 32205-4418

RETURN RECEIPT REQUESTED

7000 0600 0026 4145 4122

Dear Mr. Milton:

**Re: Undocketed - Florida Commercial Payfon, Inc. (TG732); RAF Compliance Audit; 02-112-1-9**

We are auditing your revenues and Regulatory Assessment Fees for 2001 in accordance with Commission audit procedures. As part of this process, the Commission staff reconciles the revenues used to calculate your Regulatory Assessment Fee with the reported revenues. Mr. Robert Moore, the staff auditor, attempted to acquire information necessary to support your filing for your regulatory assessment fee filing for the year 2001. You have refused to submit any data to the staff auditor. You have also refused to respond to any attempts at communication made by Mr. Moore's supervisor, Ms. Lynn Deamer.

This RAF compliance audit is one of several random audits we perform each year. These audits are meant to be relatively simple reconciliations of the RAF return to the company's books and records. Attachment A is a copy of Commission Rule 25-4.019, F.A.C. which states that "the utility shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require." The staff auditor has simply asked for documentation to support the numbers reflected on your RAF return. Attachment B is a copy of Commission Rule 25-4.043, F.A.C. which also states "replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry."

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Mr. Hozae Milton, President  
Page 2  
October 8, 2002

I have reviewed Mr. Moore's attempts to contact you as well as his supervisor's attempts to contact you. I also remember speaking with you on the phone and you committed that you were working with Mr. Moore to complete this audit. I have listed on Attachment C the minimum items that must be submitted to document the numbers filed on your RAF return. These may not be all-inclusive but if you submit these, that would be a substantial start in completing this audit. If you do not provide the listed information to the auditor by the close of business on October 22, 2002, or provide good reason why you should have an additional delay, we shall be forced we shall be forced to initiate show cause proceedings. These proceedings will be to determine if the company should be fined for failure to comply with Commission rules by not responding to audit requests. Fines for failure to follow Commission rules may be calculated at \$25,000 per day that the company refuses to respond. Failure to respond may also result in the cancellation of your certificate to operate.

If you have any specific reasons why it should take longer to provide these items, please call Mr. Moore, Ms. Deamer, or myself. You may reach me at (850) 413-6487.

Sincerely,



Denise N. Vandiver  
Bureau Chief of Auditing

Enclosures (3)

cc: Tallahassee District Office (Lynn Deamer, Bob Moore)

**ATTACHMENT A**

**25-4.019 Records and Reports in General.**

(1) Each utility shall furnish to the Commission at such times and in such form as the Commission may require the results of any required tests and summaries of any required records. The utility shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require. All such data, unless otherwise specified, shall be consistent with and reconcilable with the utility's annual report to the Commission.

(2) Where a telephone company is operated with another enterprise, records must be separated in such manner that the results of the telephone operation may be determined at any time.

(3) Upon notification to the utility, members may, at reasonable times, make personal visits to the company offices or other places of business within or without the State and may inspect any accounts, books, records, and papers of the company which may be necessary in the discharge of Commission duties. Commission staff members will present Commission identification cards as the written authority to inspect records. During such visits the company shall provide the staff member(s) with adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the company's outside auditors.

**Specific Authority: 350.127(2), F.S.**

**Law Implemented: 364.18, 364.183, 364.386, F.S.**

**History: Revised 12/1/68, Amended 5/4/81, formerly 25-4.19.**

DOCKET NO. 021206-TC  
DATE: January 9, 2003

Attachment D

## **ATTACHMENT B**

**25-4.043 Response to Commission Staff Inquiries.** The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

**Specific Authority: 350.127(2), F.S.**

**Law Implemented: 364.183, F.S.**

**History: New 12/1/68, formerly 25-4.43.**

**ATTACHMENT C**

Florida Commercial Payfon, Inc.  
RAF Compliance Audit 02-112-1-9  
Minimum Documentation Required

REVENUES

1. 2001 General ledger indicating total telecommunications revenues of \$76,652.95.

OR

2. Cash deposit slips indicating 2001 revenues of \$76,652.95.

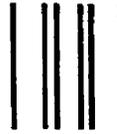
OR

3. Other financial evidence detailing source of revenue and completeness of revenue, (i.e. receipt books, billing statements, etc.)

EXPENSES

1. Invoices from other telecommunication companies indicating amounts paid for the use of the intrastate telecommunications network.

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •  
*Florida Public Service Commission  
2540 SHUMARD OAK Blvd, Ste 215  
TALLAHASSEE FL 32399-0850  
ATTN: Lynn Deamer*

01



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Mr. Hozae Milton, President  
Florida Commerical Payfon, Inc.  
5625 Verna Blvd., Suite 9  
Jacksonville, FL 32205-4418**

**COMPLETE THIS SECTION ON DELIVERY**

|   |  |
|---|--|
| A. Received by (Please Print Clearly)<br><i>ASAS</i>                          | B. Date of Delivery  |
| C. Signature<br><i>[Signature]</i>  | <input type="checkbox"/> Agent<br><input type="checkbox"/> Addressee   |
| D. Is delivery address different from item 1?<br>If YES, enter details below: | <input type="checkbox"/> Yes<br><input type="checkbox"/> No  |
| <p>JACKSONVILLE FL 32205-4418<br/>OCT 15 2002</p>                             |  |
| 3. Service Type   | <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt <input type="checkbox"/> Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. |
| 4. Restricted Delivery? (Extra Fee)   | <input type="checkbox"/> Yes   |

2. Article Number (Copy from service label)

*7000 060 0026 4145 4122*