



Public Service Commission

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DATE: MARCH 23, 2000

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

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *one*
DIVISION OF COMMUNICATIONS (LEWIS, MCCOY) *me*

RE: DOCKET NO. 971659-TP - ORANGE COUNTY CIRCUIT COURT REFERRAL OF ISSUES IN CASE NO. CI 96-1812 (WELLINGTON PROPERTY MANAGEMENT, INC. AND EMERSON COMMUNICATIONS CORPORATION VS. PARC CORNICHE CONDOMINIUM ASSOCIATION, INC. AND ORANGE COUNTY, FLORIDA) TO THE FLORIDA PUBLIC SERVICE COMMISSION FOR REVIEW AND DETERMINATION OF WHAT ISSUES, IF ANY, THE COMMISSION HAS JURISDICTION OVER.

DOCKET NO. 980732-TX - APPLICATION FOR CERTIFICATE TO PROVIDE ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE BY EMERSON COMMUNICATIONS CORPORATION.

AGENDA: APRIL 4, 2000 - REGULAR AGENDA - ISSUE 2 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\971659.RCM

CASE BACKGROUND

By Order No. PSC-98-0699-FOF-TP, issued May 20, 1998, this Commission ruled on a request from the Orange County Circuit Court to determine Commission jurisdiction over issues raised by Wellington Property Management, Inc. (Wellington) and Emerson Communications Corporation, Inc. (Emerson) in a circuit complaint against Parc Corniche Condominium Association, Inc. (Parc Corniche).

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PSC-RECORDS/REPORTING

In its abatement order, the Circuit Court asked the Commission to address the following issues:

- 1) Whether Wellington and Emerson are "telecommunications companies" within the meaning of Section 364.02(7), Florida Statutes.
- 2) Whether Wellington and Emerson obtained a Certificate of Necessity as required by Section 364.33, Florida Statutes, and Rule 25-4.004, Florida Administrative Code.
- 3) Whether Wellington and Emerson have authority to own the television and telephone lines.

In Order No. PSC-98-0699-FOF-TP, the Commission answered the questions as follows:

- 1) Wellington and Emerson may be telecommunications companies under Florida law. We do not have enough information, however, to make a final determination at this time. Emerson and Wellington have agreed to cooperate in the PSC application process to determine the need for certification. An application package was sent to counsel for Emerson and Wellington on April 2, 1998.
- 2) Neither Wellington nor Emerson have certificates from the Commission.
- 3) Wellington and Emerson would have been precluded from owning telecommunications lines under Telco Communications Company v. Clark, 695 So. 2d 304 (Fla. 1997), and Chapter 364, Florida Statutes, as written prior to the 1995 amendments and as applied in the Telco decision. The rewrite of the statutes opened telecommunications services in Florida to competition and permitted the entry into the market of entities previously precluded. Thus, depending on the services, equipment, and lines provided by Wellington and Emerson, they may be permitted to own the lines up to the demarcation point and to provide telecommunications services. However, this issue will not be addressed by the PSC until their application is received and processed. We intend to exercise jurisdiction over the telephone lines in the Parc Corniche condominium, but we do not

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have jurisdiction to rule on any issue related to
cable television lines.

In addition to the Court Action, Parc Corniche filed a separate complaint in Docket No. 971659-TP relating to ownership of the lines which the Commission declined to rule on until there was a more complete record of the ownership of the telephone lines, equipment, and service in the condominium.

This recommendation addresses the remaining issues in this docket, including the application for certification required by Order No. PSC-98-0699-FOF-TP.

DISCUSSION OF ISSUES

ISSUE 1: Is Emerson Communications Company or Wellington Property Management Inc. a "telecommunications company" within the meaning of Section 364.02, Florida Statutes, and thus required to obtain a certificate of necessity in order to continue its current operations?

RECOMMENDATION: No. Neither Emerson Communications Company nor Wellington Property Management Inc. is operating as telecommunications company within the meaning of Section 364.02, Florida Statutes. Further, Emerson's request to withdraw its application should be granted with a refund of its application fee.

STAFF ANALYSIS: Staff held several meetings and phone conversations with the parties involved in these dockets. We conclude based on these meetings and the information provided, that Emerson incurred the cost to install the telephone lines in the Parc Corniche condominium in 1989. It leases those lines to Labree Management which operates as a call aggregator. Wellington is the former management company for Parc Corniche, and is a sister company to Emerson. Emerson does not appear to be providing telecommunication service to an end user.

On July 19, 1996, Wellington and Emerson leased the Parc Corniche rental office, including the computer and telephone equipment servicing the condominium, to Labree Management, Inc. (Labree), which became the new management company for Parc Corniche. The Parc Corniche condominium is not a single building; it is a multiple building condominium complex. Managing the Parc Corniche property as a hotel, Labree operates the rental office, registers guests into the condominium units, provides telephone PBX switchboard service to guests, and separately bills the guests for the telephone charges accrued during their stay. It appears that the based upon the services Labree provides, Labree should be classified as call aggregator pursuant to Rule 25-24.610(1)(a), Florida Administrative Code. Labree receives one telephone bill from the local exchange company. Labree is not certificated to provide telecommunications services in Florida.

Staff notes that Sprint Florida currently provides direct service to three units at Parc Corniche and has provided direct service to other units in the past. In addition, staff has become aware that Parc Corniche may have units that are occupied by permanent residents. Staff believes that should Labree, or any other subsequent management company, provide service to a permanent

resident of Parc Corniche, it must first obtain a certificate of necessity as a shared tenant service provider or as an alternative local exchange telecommunications company.

Based on this information, staff concludes that neither Emerson, Wellington, nor Labree is operating as a telecommunications company required to have a certificate at this time. Further, staff recommends that Emerson's request to withdraw its application and refund its application fee based upon staff's conclusions be granted.

ISSUE 2: Who owns the telecommunications lines in the Parc Corniche Condominium?

RECOMMENDATION: Emerson Communications Company owns the lines, although Labree Management has control over access.

STAFF ANALYSIS: On January 31, 1996, Parc Corniche Condominium Association declared ownership of the lines, or the facilities over which telecommunications service is provided, inside the buildings in the condominium complex. This action was challenged in circuit court. The Circuit Court proceeding was abated for this Commission's determination of ownership. Staff believes that ownership in the lines remain with Emerson Communications Company. We reach this conclusion based upon the change in the law since the initial Telco decision upon which Parc Corniche relies and on the facts as we understand them.

As discussed in Order No. PSC-98-0699-FOF-TP, the rewrite of the statutes opened the entry into the telecommunications market for entities previously precluded. Thus, depending on the services, equipment, and lines provided by Wellington and Emerson, they may be permitted to own the lines up to the demarcation point and to provide telecommunications services to transient end users.

Staff has previously noted that Emerson incurred the cost of installation of the lines and leased those lines in the condominium complex to Labree. Therefore, we recommend that Emerson owns those facilities. Nothing in the current applicable law precludes Emerson from owning the lines. Further, Parc Corniche has provided no evidence establishing ownership in the lines other than through

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the application of the Telco decision to this situation and its own declaration.

In conclusion, staff recommends that the Commission find that Emerson owns the telecommunication lines at the Parc Corniche Condominium site. This conclusion should be communicated to the Circuit Court after the Order becomes final. Staff believes this recommendation fully resolves the complaint filed at the Commission by Parc Corniche requesting the Commission to determine the ownership of the telephone and cable television lines at the Parc Corniche Condominium.

The Commission previously ruled that it had no jurisdiction over cable television lines in Order No. PSC-98-0699-FOF-TP.

ISSUE 3: Should these dockets be closed?

RECOMMENDATION: Yes. These docket should be closed if no person whose interests are substantially affected by the proposed action, files a protest of the Commission's decision on Issue 2 within the 21 day protest period. If no timely protest of Issue 2 is filed, these docket may be closed upon the issuance of a consummating order.

STAFF ANALYSIS: These docket should be closed if no person whose interests are substantially affected by the proposed action, files a protest of the Commission's decision on Issue 2 within the 21 day protest period. If no timely protest of Issue 2 is filed, these docket may be closed upon the issuance of a consummating order.