

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause pro-)	DOCKET NO. 910289-TP
ceedings against EDGEWATER BEACH RESORT)	
for operating as a telephone company in)	ORDER NO. 25638
violation of Rules 25-4.004 and 25-24.470,)	
F.A.C.)	ISSUED: 1/27/92
)	

ORDER ON PREHEARING PROCEDURE

Pursuant to the provisions of Rule 25-22.038, Florida Administrative Code, all parties and Staff are hereby required to file with the Director of Records and Reporting a prehearing statement on or before March 13, 1992. Each prehearing statement shall set forth the following:

- (a) all known witnesses that may be called and the subject matter of their testimony;
- (b) all known exhibits, their contents, and whether they may be identified on a composite basis and witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue;
- (f) a statement of each policy question the party considers at issue and which of the party's witnesses will address the issue;
- (g) a statement of the party's position on each issue identified pursuant to paragraphs (d), (e) and (f) and the appropriate witness;
- (h) a statement of issues that have been stipulated to by the parties;
- (i) a statement of all pending motions or other matters the party seeks action upon; and
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

DOCUMENT NUMBER-DATE

00931 JAN 27 1992

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The original and fifteen copies of each prehearing statement must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 13, 1992. Failure of a party to timely file a prehearing statement shall be a waiver of any issues not raised by other parties or by the Commission Staff. In addition, such failure shall preclude the party from presenting testimony in favor of his or her position on such omitted issues. Copies of prehearing statements shall also be served on all parties. Prehearing statements shall substantially conform to the Florida Rules of Civil Procedure requirements as to form, signatures, and certifications.

Each party is required to prefile all exhibits and all direct testimony it intends to sponsor in written form. Prefiled testimony shall be typed on standard 8 1/2 x 11 inch transcript quality paper, double spaced, with 25 numbered lines, in question and answer format, with a sufficient left margin to allow for binding. An original and fifteen copies of each witness' prefiled testimony and each exhibit must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the due date. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony. Copies of all prefiled testimony shall also be served by the sponsoring party on all other parties.

A final prehearing conference will be held on April 3, 1992, in Tallahassee. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, will be met in this case and the following shall apply:

Any party who fails to attend the final prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in his or her prehearing statement.

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: he or she was unable to identify the issue because of the complexity of the matter; discovery or other

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prehearing procedures were not adequate to fully develop the issues; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, he or she shall bring that fact to the attention of the prehearing officer. If the prehearing officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify his or her position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in his or her post-hearing statement.

To facilitate the management of documents in this docket, parties and Commission Staff shall submit an exhibit list with their respective prehearing statements. Exhibits will be numbered at the hearing. Each exhibit submitted shall have the following in the upper right-hand corner (for identification prior to the hearing): the docket number, the witness's name, the word "Exhibit" followed by a blank line for the Exhibit Number, the title of the exhibit, and a prehearing identification number consisting of the initials of the witness and a number.

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An example of the typical exhibit identification format is as follows:

Docket No. 870675-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes Of Use by Time of Day
(JXD-1)

The following dates have been established to govern the key activities of this proceeding in order to maintain an orderly proceeding.

1. February 6, 1992 - Motion Hearing
2. February 21, 1992 - Direct Testimony to be filed
3. March 13, 1992 - Rebuttal Testimony to be filed
4. March 13, 1992 - Prehearing Statements to be filed
5. March 13, 1992 - No discovery served after this date
6. April 3, 1992 - Prehearing Conference
7. April 17, 1992 - All discovery completed
8. May 1, 1992 - Hearing to be held.

Attached to this order as Appendix "A" is a tentative list of the issues which will be addressed in this proceeding. Prefiled testimony and prehearing statements shall be addressed to the issues set forth in Appendix "A". The issues on the attached list were determined based upon the scope of this proceeding. The scope of this proceeding was set by our Order to Show Cause, Order No. 24878, issued August 5, 1991. In compiling the list of issues, consideration was given to all issues proposed by all parties at the two issue identification workshops. To the extent those proposed issues are relevant, they are either positions on the attached issues or defenses to the attached issues.

On January 8, 1992, Edgewater Communications (EC) filed a Motion and Request for Hearing Before the Prehearing Officer on Issue Identification (Motion). The Summit and Edgewater Beach Owners Association, Inc. have both joined in EC's Motion (on

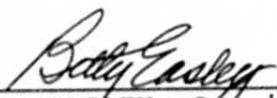
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January 8, 1992, and January 9, 1992, respectively). A hearing on this Motion has been set for February 6, 1992, as reflected in the schedule of key activities above. Although EC has grounded its Motion on the fact that issues had not been set and that fact has now been rendered moot by the issuance of the instant Order, the gravamen of EC's Motion is that "identification of issues determines the entire posture of the case..." Accordingly, in the interest of an expeditious resolution of this docket, EC shall be provided with the opportunity to present its argument for expanding the issues beyond those identified in Appendix "A" to this Order.

The hearing in this docket is presently set for May 1, 1992. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by April 17, 1992, and no discovery requests shall be served after March 13, 1992.

In addition, to facilitate their identification, all interrogatories, requests for admissions, and requests for production of documents shall be numbered consecutively. Each set of discovery requests shall be numbered sequentially from any previous set(s). Unless authorized by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 200, and requests for production of documents, including all subparts, shall be limited to 100.

By ORDER of Commissioner Betty Easley, Commissioner and Prehearing Officer, this 27th day of JANUARY, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

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APPENDIX "A"

LIST OF ISSUES

1. Has Edgewater Beach Resort (EBR), Edgewater Beach Telephone Company (EBTC), Edgewater Communications (EC), or any other affiliated entity provided telecommunications service to the public for hire within Florida? If so: to whom; under what terms and conditions; at what rates and charges; and during what periods of time?
2. What is the appropriate demarcation point for each of the various types of units located at EBR?
3. Has EBR, EBTC, EC, or any other affiliated entity violated any statutes under the jurisdiction of the Florida Public Service Commission (FPSC) or any rules promulgated by the FPSC? If so, which statutes or rules are involved and what is the specific violation?
4. Should EBR, EBTC, EC, or any other affiliated entity now be allowed to provide telecommunications service to the public for hire within Florida? If so: to whom; under what terms and conditions; and at what rates and charges?
5. Should a penalty be assessed against EBR, EBTC, EC, or any other affiliated entity?
6. Should EBR, EBTC, EC, or any other affiliated entity be required to make refunds? If so: in what amounts; to whom; and for what?
7. What action is required to implement the Commission's decisions in the above issues?