

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: INITIATION OF SHOW CAUSE	)	DOCKET NO. 880899-TP
PROCEEDINGS AGAINST BARRIER DUNES	)	ORDER NO. 20790
DEVELOPMENT CORPORATION FOR VIOLATION OF	)	ISSUED: 2-21-89
RULE 25-4.004, F.A.C. (DEFERRED FROM THE	)	
1/3/89 CONFERENCE)	)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 JOHN T. HEKNDON

ORDER RESOLVING SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

Barrier Dunes is a resort community located on the Gulf of Mexico at Cape San Blas, Florida. The resort is operated by Barrier Dunes Development Corporation and consists of privately owned units, rentals and private ownership units under lease to the resort management for time-sharing rentals.

In 1986 the resort purchased a Hitachi EPABX-EDX telephone switch, installed a buried cable network to feed each unit, and initiated telephone service to its townhomes on June 25, 1986. The resort's management did not pursue authorization from this Commission based upon advice from a third-party consultant hired to install the telephone system.

The resort's system came to this Commission's attention in the form of a letter dated August 18, 1987, in which a Barrier Dunes' resident referred a denial of service within the Barrier Dunes complex by St. Joseph Telephone Company's (St. Joe), the local exchange company (LEC) serving this area. St. Joe's response explained that the denial was because the resort was private property and its management would not allow St. Joe on the premises to provide telephone service to private residents. It appears clear that Barrier Dunes management did not grant the LEC right-of-way over its private property to provide owners with local or long distance telephone service. Poor communication between the resort's consultant and St. Joe is cited as the reason for this result.

Our Staff met with both Barrier Dunes and St. Joe officials on several occasions, leading to a proposed lease allowing St. Joe to lease the distribution system inside the complex to provide LEC service to any customer. Delay by Barrier Dunes' management in following through on this proposal and, in notifying pertinent residents of the availability of LEC service led to initiation of this proceeding.

In November of 1988, the parties reached tentative agreement for St. Joe to purchase the telephone distribution plant inside the complex from Barrier Dunes, and to begin service to the entire resort. A final agreement, dated December 19, 1988, indicated that the cable had been purchased. St. Joe began immediate service to five (5)

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permanent residents. Plans call for the resort's transient units to be converted to St. Joe's system on January 13, 1989.

#### DISCUSSION

We have consistently interpreted the provisions of Section 364.335(4), Florida Statutes, that preclude certification of facilities that duplicate existing local exchange services, and the provisions of Rule 25-4.004, Florida Administrative Code, prohibiting the construction or extension of telephone plant without a certificate from this Commission, as prohibitions upon any duplication of or competition with local exchange service. Specific exceptions are allowed, such as the restricted reselling of local service to commercial tenants in a single building allowed in Rule 25.4-0041, Florida Administrative Code, otherwise known as shared tenant service (STS).

The ownership and operation of the switch and the inside cable by Barrier Dunes clearly rendered it a "telephone company" according to Section 364.02, F.S. Its failure to seek certification placed Barrier Dunes in violation of the provisions listed above. Barrier Dunes management argues that its failure to seek certification was reasonable given the prevailing interpretation of Rule 25-4.0041 in Order No. 17111, issued January 15, 1987, in Docket No. 860455-TP. In that order, we found that a telephone provider did not require a certificate where occupancy at the service location was for nine months or less, bringing it within the so-called "transient" exemption for hotels, airports, nursing homes, etc. However, where a dwelling is privately owned, occupancy must be assumed to be year round. We established in Order No. 17111 that permanent residencies do not fall within the transient exemption.

Time-share resorts are unique in that they have rentals, privately owned units and privately owned units assigned for leasing. Our policy on telephone service to such facilities was clarified in Order No. 18936, issued March 2, 1988, in Docket No. 871185-TI, where we held that any privately owned units not specifically included in a resort's rental program should be considered permanent units. Because proceedings in Docket No. 871185-TI were ongoing at the time Barrier Dunes was implementing its system, its reasonable argument holds merit. We are concerned nevertheless that no attempt was made to verify the resort's status with this Commission.

Once it understood the gravity of its actions, Barrier Dunes management began substantial efforts to resolve the problems. Though proceeding slowly at times, the resort has shown a determination to come into compliance with our regulations, going to the point of selling the serving cable and the eventual disconnection of the switch. For this reason, we find that Barrier Dunes should not be penalized for its actions described herein.

We believe, however, that it is in the public interest to require Barrier Dunes to provide a rebate of both local and toll rates that exceeded the market standards. Local rates should be refunded to those permanent residents served by the resort's telephone system in the amount of the difference between the rates it charged and St. Joe's local rates, plus 8% interest per annum. The permanent residents who wanted local telephone service had no choice but to pay the rates charged by the resort. We find further that, because the resort blocked long distance service by St. Joe or the resident's choice of

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available interexchange carrier (IXC), the resort should provide a rebate of long distance charges in the amount of the difference between the resort's and St. Joe's or AT&T's long distance rates as appropriate, plus 8% interest per annum, to those Barrier Dunes permanent residents served by the resort telephone system.

Barrier Dunes management shall review each subscriber's telephone record, and, excluding periods where service was authorized under the transient exception, provide a rebate if the resort's rates were higher than St. Joe's or, where applicable, AT&T's rates. The resort should provide the rebates within thirty (30) days of this Order, with a list of the names, addresses, method of computation, rebate amount and interest paid forwarded to our Staff.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Barrier Dunes Development Corporation, P.O. Box 997, Thomasville, Georgia 31799, shall calculate and provide rebates of local and toll charges to residents of the Barrier Dunes Resort at Cape San Blas, Florida, as set out in the body of this order. It is further

ORDERED that this docket shall remain open for thirty (30) days from the date of this Order to allow completion of the rebates.

By ORDER of the Florida Public Service Commission,  
this 21st day of FEBRUARY, 1989.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and

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filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.