

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to )	DOCKET NO. 910073-TI
provide interexchange telecommunications )	ORDER NO. 25447
services by OCEAN REEF CLUB, INC. )	ISSUED: 12/9/91
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 BETTY EASLEY  
 MICHAEL MCK. WILSON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

Ocean Reef Club, Inc. (Ocean Reef or ORC) is a self-contained destination resort encompassing approximately 4,000 acres located in Key Largo, Florida. The resort has privately owned units, rental units, privately owned rental units in ORC's rental program, privately owned units rented through other than the ORC program, and various commercial entities. ORC is located in the Southern Bell Telephone and Telegraph Company (Southern Bell) service area.

On January 18, 1991, Ocean Reef applied for a certificate to provide interexchange telecommunications services. Review of the application and subsequent data requests to ORC indicated that ORC has been providing local and long distance telephone service at the resort for several years. ORC's possible violation of applicable statutes, rules, and orders is the subject of this proceeding. Additionally, we note that at the November 19, 1991, Agenda Conference we granted ORC an interexchange carrier certificate so that the resort could provide that service.

We have consistently interpreted the provisions of Section 364.335(3) (1990), Florida Statutes (renumbered from Section 364.335(4) (1989) and Rule 25-4.004, Florida Administrative Code, as prohibitions against duplication of or competition with the local exchange company (LEC), absent a specific exception authorized by this Commission. Rule 25-4.004 restricts residential telephone service to the certificated LEC. In a similar vein, Rule

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25-24.470 restricts the provision of interexchange telephone service to certificated interexchange carriers (IXCs).

Restrictions on the resale of telephone service are matters of long-standing policy of this Commission. By Order No. 11206, issued September 29, 1982, we addressed the issue of resale of long distance service. In setting forth our regulatory scheme for resale of intrastate Wide Area Toll Service (WATS) and Message Toll Service (MTS), we recognized a "transient" exception to the no-resale provision. This exception was limited primarily to hotels, motels, dormitories, nursing homes, hospitals, and other entities providing telephone service to transient guests. In Order No. 13367, issued June 1, 1984, we reaffirmed the findings made in Order No. 11206.

By Order No. 11375, issued December 3, 1982, we disallowed intercommunication among lessees, behind the switch, without access the central office of the certificated LEC. We found that such intercommunication between tenants constituted local exchange service, requiring certification by this Commission. In Order No. 17111, issued January 15, 1987, we articulated our policy regarding resale or sharing of local telephone service in a number of diverse situations. Notably, Order No. 17111 defined transient as persons temporarily occupying a premises for nine months or less. We found that it would not be practical or economically feasible for these individuals to order service from the LEC.

Both Order No. 18936, issued March 2, 1988, in the Sandestin docket, and Order No. 20790, issued February 21, 1989, in the Barrier Dunes Docket, dealt with the provision of telephone service in facilities such as Ocean Reef that contain hybrid or mixed types of occupancy.

In Order No. 18936, Sandestin argued that most of the service it provided was to transient end users. After examining the problem of how to classify facilities with mixed occupancy reasonably, we found inclusion in the resort's own rental program to be the appropriate yardstick. Accordingly, we determined that Sandestin could only provide telephone service to those rental units that it owned and those privately owned units included in its rental program. We disallowed resort-provided telephone service to all other privately owned units. A limited exception was authorized for four key resort employees, provided that those employees also took service from the certificated LEC. See Order

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No. 20657, issued January 25, 1989, and Order No. 21590, issued July 21, 1989.

In Order No. 20790, we again were confronted with the situation where a resort had mixed types of occupancy. While recognizing the unique nature of time-share facilities, our conclusions remained the same. In addition, we expressed strong concern over Barrier Dunes' failure to clarify its status with this Commission, particularly in light of its expressed doubts regarding our policies on this subject.

Finally, by Order No. 24878, issued August 5, 1991, we ordered the Edgewater Beach Resort to show cause why it should not be found in violation of applicable statutes, rules, and orders for providing local and toll service for hire. We reiterated our policy that the only exceptions to the prohibition against providing such services in developments with mixed occupancy are for those rental units owned by the resort, and those privately owned units placed in the resort's own rental program. Although Edgewater Beach Resort has requested a hearing on the matter, our policies remain intact.

#### DISCUSSION

Ocean Reef Club's provision of local and toll telephone service for hire has violated the statutes, rules, and orders as set forth above. ORC has provided service to units other than those rental units owned by the resort, and those privately owned units placed in the resort's own rental program.

Our Staff's review indicates there are approximately 1100 unit owners that do not reside at the resort full time. ORC states that 304 of these customers take service from ORC. However, of those 304 customers, only 175 have their units in the ORC rental program. ORC indicates that many of the other units are in rental programs other than ORC's. Additionally, there are 60 commercial unaffiliated customers at the resort, and all take service from Southern Bell. However, 15 of those also take service from ORC. Finally, ORC is providing service to three executives who reside at the resort. ORC is furnishing service to units that do not qualify as transient under the Commission's current policy. These customers do not fit within the transient exception as set forth in Order No. 17111.

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Upon consideration of the facts and circumstances set forth above, we find it appropriate to require Ocean Reef Club, Inc. to show cause:

1. Why it should not be found in violation of Rule 25-24.470, Florida Administrative Code.
2. Why it should not be found in violation of Rule 25-4.004, Florida Administrative Code.
3. Why it should not limit its resale of local telephone service to transient guests and to private units in the resort's rental program.
4. Why it should not be fined an amount to be determined by the Commission, for each violation alleged in the body of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Ocean Reef Club, Inc. shall show cause, in writing, in response to each of the four points set forth at the end of the body of this Order. It is further

ORDERED that any response filed must contain specific statements of fact and law. It is further

ORDERED that any response filed to this Order must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, within the time limit established below. It is further

ORDERED that failure to specifically request a hearing in any written response that is submitted will constitute a waiver of any right to a hearing in this matter. It is further

ORDERED that failure to respond in the form and within the prescribed time frame will constitute an admission of the violations alleged herein and a waiver of any right to a hearing. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission, this 9th  
day of DECEMBER, 1991.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

PAK

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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 12/30/91.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida

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Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by 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 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.